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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 334.

SYLVESTER H. KNEELAND, APPELLANT,

vs.

THE BASS FOUNDRY AND MACHINE WORKS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED FEBRUARY 28, 1888.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 8, 1891.

1 Pleas of the circuit court of the United States within and for the district of Indiana, begun and holden at the United States court-house, in the city of Indianapolis, on the first Tuesday of November, in the year of our Lord one thousand eight hundred and eighty-five, before the Honorable Walter Q. Gresham, judge of the circuit court of the United States for the seventh judicial circuit, and the Honorable William A. Woods, judge of the district court of the United States for the district of Indiana and *ex officio* judge of said circuit court.

THE CENTRAL TRUST COMPANY OF NEW York, James M. Quigley, Charles T. Harbeck, and John McNab
vs.
THE TOLEDO, DELPHOS AND BURLINGTON Railroad Company, The Toledo, Cincinnati and St. Louis Railroad Company, and Grenville D. Braman.
} Chancery. No. 7706.

In the matter of the intervening petition of the Bass Foundry and Machine Works.

Be it remembered that heretofore, to wit, at the May term of said court, on the 20th day of October, 1883, before the Honorable William A. Woods, one of the judges of said court, the following proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, by Messrs. Butler, Stillman & Hubbard, Messrs. Hoadly, Johnson & Colston, and Messrs. Baker, Hord & Hendricks, its solicitors, and files its bill of complaint herein in the words following, to wit:

2 To the judges of the circuit court of the United States for the district of Indiana:

The Central Trust Company of New York, a corporation organized and existing under the laws of the State of New York and a citizen of that State, brings this its bill of complaint against the Toledo, Delphos and Burlington Railroad Company, a corporation organized under the laws of the States of Ohio and Indiana; the Toledo, Cincinnati and St. Louis Railroad Company, a corporation created by and existing under the laws of the States of Ohio, Indiana, and Illinois and a citizen of the State of Indiana, and Grenville D. Bramen, a citizen of Massachusetts; and thereupon your orator complains and says:

I. That on the 17th day of January, 1880, the Toledo, Delphos and Burlington Railroad Company, a corporation created by and existing under the laws of the States of Ohio and Indiana, formed by the consolidation of certain corporations known as the Toledo and Maumee Narrow-Gauge Railroad Company, the Toledo, Delphos and Indianapolis Railway Company, the Delphos and Kokomo Railway Company, and the Delphos, Bluffton and Frankfort Rail-

road Company, was engaged in the construction and equip-
3 ment of the line of railroad from Toledo, Ohio, to Kokomo, Indiana, hereinafter more particularly described; and on said last-mentioned day, by its president and secretary, under its corporate seal and in pursuance of a resolution to that end duly adopted by the board of directors of said corporation on the 12th day of December, 1879, which resolution was thereafter and before the execution of the bonds and deed of trust or mortgage hereinafter mentioned duly ratified by the vote of a majority of the stockholders of said corporation at a meeting duly convened and held on the 17th day of January, 1880, said Toledo, Delphos and Burlington Railroad Company did execute its one thousand two hundred and fifty bonds for the sum of $1,000 each, dated the 1st day of January, 1880, payable on the 1st day of January, 1910, bearing six per cent. interest per annum, payable semi-annually on the first days of January and July of each and every year at the city of New York, each having interest warrants or coupons for thirty dollars each thereto attached for payment of the interest as aforesaid; and the said Toledo, Delphos and Burlington Railroad Company issued and sold one thousand two hundred and
4 fifty of said bonds, with said interest warrants or coupons attached, all of which said bonds were, before the same were issued, duly certified by your orator, and said bonds are now in the hands of divers and sundry persons as holders thepeof, and with the proceeds of sale of said bonds the said corporation proceeded to construct, equip, maintain, and operate said railway.

II. Your orator further shows that, in order to secure the payment of the principal and interest of said issue of bonds, the said Toledo, Delphos and Burlington Railroad Company did, on said 17th day of January, 1880, in pursuance of the further provision of said resolution, execute and deliver unto your orator, a corporation created by and existing under the laws of the State of New York and a citizen of said last-mentioned State, a certain deed or indenture of trust and mortgage, which was duly recorded in the counties of Lucas and Henry, Ohio, on January 21, 1880; in the counties of Wood and Putnam, Ohio, on January 22, 1880; in the counties of Allen and Van Wert, Ohio, on January 23, 1880; in the counties of Adams and Wells, Indiana, on January 24, 1880; in the counties of Huntington and Wabash, Indiana, on January 26,
5 1880; in the counties of Grant and Howard, Indiana, on January 27, 1880, and in the county of Miami, Indiana, on January 28, 1880, and thereby it did bargain, sell, grant, convey, and confirm unto your orator and its successor or successors in trust all and singular the line of railroad of the said Toledo, Delphos and Burlington Railroad Company, as the same then was or should thereafter be constructed, between Toledo, Lucas county, Ohio, through the counties of Lucas, Wood, Henry, Putnam, Allen, and Van Wert, in the State of Ohio, and the counties of Adams, Wells, Huntington, Wabash, Miami, Grant, and Howard, in the State of Indiana (and not including the branch line from Delphos, Allen county, Ohio, thence via Spencerville, Mendon, and Mercer and through the coun-

ties of Allen, Van Wert, and Mercer to Shanesville, Mercer county, Ohio), being about one hundred and eighty miles in length, together with all and singular the rights of way, road-bed, made or to be made, its track, laid or to be laid, between the terminal points aforesaid, together with all the stations, depot grounds, rails, fences,
bridges, sidings, engine-houses, machine shops, buildings,
6 erections in any way then appertaining or which should thereafter appertain unto said described line of railroads, together with all the engines, cars, machinery, supplies, tools, and fixtures which were then or should be at any time thereafter held, owned, or acquired by the said railroad company for use in connection with the line of railroad aforesaid, and all its depot grounds, yards, sidings, turnouts, sheds, machine shops, leasehold rights, and other terminal facilities, together with all and singular the powers and franchises thereto belonging, and the tolls, income, and revenue to be levied and derived therefrom; to have and to hold the said granted premises unto your orator and its successors forever, in trust, nevertheless, and for the uses and purposes expressed in the said deed of trust or mortgage, which will more fully and at large appear by reference to the original thereof, and your orator craves leave to produce and refer to said original on the hearing of this cause.

III. Your orator further shows that in and by said mortgage or deed of trust to your orator it was, among other things, provided,
and the said Toledo, Delphos and Burlington Railroad Com-
7 pany did therein covenant and agree, that if the interest due on any of said bonds should not be paid by the said last-mentioned railroad company when the same should become due and should remain in arrears for six months after it had been actually demanded at the place where the same was payable, as specified in said coupons, or in case the principal of said bonds or any of them should not be paid at their maturity, then it should be lawful for your orator or its successor to forthwith demand, enter, take, and maintain possession of all and singular the railroad premises and franchises thereby conveyed, and as the attorney-in-fact or the agent of said last-mentioned railroad company, by itself and agents or substitutes duly constituted, have, use, manage, operate, and enjoy the same and each and every part thereof to as full an extent as the said railroad company might lawfully do, and should make from time to time all needful repairs, alterations, and additions thereto and receive all the tolls, income, and revenue thereof, and, after deducting the expense of such use, operation, and charges of taking
such possession and a fair compensation for the services of
8 such trustee for such taking possession and management while in possession, your orator or its successor for the time being should apply the remaining income and revenue arising from the use of said mortgaged property and coming to its hand- to the payment of interest in default and maturing from time to time, satisfying the said coupons in the order of their several maturities, and thereafter apply the residue upon the principal of said then outstanding bonds.

And your orator further shows that it was also provided in said

mortgage or deed of trust that if a six months' default should occur either in payment of principal or interest of any of the bonds thereby secured after such actual demand as aforesaid, then it should be lawful for your orator or said trustee for the time being, with or without entry as aforesaid, to cause all and singular the said premises, railway and appurtenances, equipment, and franchises thereby conveyed to be sold as an entirety at public auction to the highest and best bidder, at the city of Kokomo, Indiana, after giving at least sixty days' notice of the time, place, and terms of sale
9 by advertisement in a newspaper of general circulation in the city of Kokomo and like advertisement in a newspaper of general circulation in the city of New York, and on such sale your orator or the trustee for the time being should make, execute, acknowledge, and deliver unto the purchaser or purchasers thereof a good and sufficient deed in fee simple conveying the said railroad property and franchises so sold, which conveyance should be a perpetual bar in law and equity against said last-mentioned railroad company, its successors and assigns and all persons claiming or to claim under them, of all right, title, interest, or claim of, in, or to the said premises or franchises or any part thereof, and that your orator, after deducting from the proceeds of sale the costs and expenses thereof and a reasonable compensation to said trustee and its attorneys and agents for services in connection therewith, should apply so much of the proceeds as might be necessary to the ratable payment of principal and the then accrued interest of all the said bonds, whether the said principal should then be due or not; and if any proceeds of such sale should remain in its hands after the
10 full payment of the principal and accrued interest of all said bonds, then it should render and pay over the same to the said last-mentioned railroad company or its successors or assigns.

And your orator further shows that it was provided in said mortgage or deed of trust and the said last-mentioned railroad company did therein and thereby expressly covenant and agree that it would, in case of default in the payment by it, either of the principal or interest, of any of its bonds thereby secured, forthwith, upon demand of your orator or of the trustee for the time being, surrender the full and peaceable possession of all and singular the premises thereby conveyed or intended to be, including all the real and personal property by it acquired subsequent to the date of the said mortgage for use in connection with the said line of railroad between said points, and would also surrender all books of account, records, and papers used by it in and about the operation thereof.

VI. Your orator further shows that the said last-mentioned railroad company, the Toledo, Delphos and Burlington Railroad
11 Company, has failed to pay the interest on said bonds and has made default therein to all the holders thereof, and said company has failed to pay the interest warrants or coupons due thereon January 1, 1883, and July 1, 1883, and the same have ever since remained unpaid, although payment of the same was duly demanded, and that said default has continued and that said interest has remained in arrears for more than six months, and many of the

holders of said bonds to whom such default has been made have required your orator to institute the necessary legal proceedings to foreclose said mortgage and sell the said mortgaged railway and property of the Toledo, Delphos and Burlington Railroad Company, known as the main line of the Toledo, Delphos and Burlington Railroad Company, and for the appointment of a receiver of said property, and to take such other and further steps necessary and proper for the protection of the rights of the holders of said bonds as your orator may be authorized to take by said deed of trust or mortgage; and your orator deems it for the interest of the parties concerned, particularly of the holders of the said first-mort-
12 gage bonds and coupons, to institute judicial proceedings for the foreclosure of said mortgage or deed of trust, and for the sale of all the premises and property thereby conveyed, and for the appointment of a receiver to take possession of, operate, and control the said railroad and its branches, and to take an inventory of all the personal or moveable property included in said mortgage, and to keep an account of the earnings and expenses incurred in operating the said railroad and branches.

And your orator further shows that the said Toledo, Delphos and Burlington Railroad Company, proper corporate action for that purpose having first been had, did, on the 17th day of January, 1880, deliver to your orator as trustee a certain other deed of trust or mortgage, bearing date on that day, whereby it granted, bargained, sold, and conveyed to your orator as trustee all the railroad, property, rights, franchises, goods, and chattels described or mentioned in the mortgage first set forth in this bill, then owned or thereafter to be acquired, to secure the payment at maturity of the principal of one thousand two hundred and fifty bonds of the said To-
13 ledo, Delphos and Burlington Railroad Company, known as income bonds, for one thousand dollars each, numbered from 1 to 1250, inclusive, payable on the 1st day of January, 1910, and of such interest thereupon as might become due thereon according to the tenor of the said last-mentioned bonds and mortgage; that it was by said last-mentioned indenture expressly agreed that interest upon said bonds was not to be due or payable except out of net earnings of said railroad company applicable to such purpose and when the amount should have been ascertained and declared by the board of directors of said last-mentioned company, whose duty it was, by the terms of said indenture, in each year during the currency of said bonds, beginning with the year 1881, in the month of January, to declare what amount, if any, of net earnings had been made during the preceding fiscal year which was justly applicable to the payment of interest on said income bonds, and such ascertainment of net earnings was to be made by deducting from gross income all operating expenditures, including rebates, taxes, insurance, liabilities for interest on the existing first-mortgage
14 bonds of the said railroad company, and other payments, as by reference to said income mortgage will more fully and at large appear.

That the said last-mentioned mortgage was duly recorded in each

of the counties in which the said first mortgage was recorded so as to constitute a second lien or mortgage upon the railroad and property thereby conveyed.

Your orator further shows, on information and belief, that twelve hundred and fifty of said bonds so secured as aforesaid by said second or income mortgage have been issued and disposed of by said Toledo, Delphos and Burlington Railroad Company and are now in the hands of divers persons as owners thereof, who are unknown to your orator.

Your orator further shows that no interest has become or is now due and payable on said last-mentioned bonds under the terms thereof and of said second mortgage owing to insufficiency of earnings, but that the principal of said bonds issued as aforesaid is a lien upon said property, rights, franchises, etc., of said Toledo, Delphos and Burlington Railroad Company described in said mortgage next after the first mortgage hereinbefore described.

15 VI. Your orator further shows that in or about the month of February, 1882, a certain corporation known as the Toledo, Cincinnati and St. Louis Railroad Company (of Indiana and Illinois), claiming to be a corporation of the said States of Indiana and Illinois by virtue of certain consolidations, and a certain other corporation, known as the Frankfort, St. Louis and Toledo Railroad Company, claiming to be a corporation of the State of Indiana, and the defendant The Toledo, Delphos and Burlington Railroad Company entered into an agreement with each other whereby said several corporations undertook, under the name of the Toledo, Cincinnati and St. Louis Railroad Company, to consolidate and unite all the lines of railroad of the Toledo, Delphos and Burlington Railroad Company (including said main-line division) with the lines of railroad of the Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois and of the Frankfort, St. Louis and Toledo Railroad Company at their respective points of connection, and to consolidate the capital stock of the said respective companies under the laws of Ohio, Indiana, and Illinois, and to

16 transfer and vest in said consolidated company, under the name of the Toledo, Cincinnati and St. Louis Railroad Company, all the powers, privileges, immunities, and property, real, personal, and mixed, belonging to the respective companies, parties to said agreement of consolidation.

And your orator further shows that the said company formed by said last-mentioned consolidation and known as the Toledo, Cincinnati and St. Louis Railway Company had or claimed to have the power to and did construct or maintain and operate a railroad from the city of Toledo, in the State of Ohio, to the town of Delphos, in said State, and thence through the States of Indiana and Illinois into the city of East St. Louis, in Illinois, including the line of railroad described in the mortgages hereinbefore set forth, and from said town of Delphos to Dayton, Ohio, and also a railroad from Dayton to Wellston, Jackson county, Ohio, and thence to Gallipolis, Gallia county, Ohio, and a branch at or near to Ironton, Ohio, and also the railroad formerly of the Iron Railroad Company, in Law-

rence county, Ohio, with a branch extending from near Sha-
17 kertown, Ohio, to a point at or near Lebanon, Ohio, to wit,
at Dodds, Warren county, Ohio, and a branch from Mercer to Shanesville, Ohio, and that on or about the 5th day of May, 1883, the said Toledo, Cincinnati and St. Louis Railroad Company entered into a further agreement of consolidation with two corporations organized under the laws of the State of Ohio, known respectively as the Cincinnati Northern Railway Company and the Spring Grove, Avondale and Cincinnati Railway Company, the first-named company owning or being engaged in constructing a railroad from Cincinnati, Ohio, to Waynesville, Warren county, Ohio, and the second-named company being the owner of a line of railroad from a point in Cincinnati to Spring Grove cemet-ry, Hamilton county, Ohio, which had theretofore been leased to said Cincinnati Northern Railroad Company, whereby said three corporations undertook to consolidate and unite all their said lines of railroad and to consolidate the capital stock of the said respective companies under the laws of Ohio, and to transfer to and vest in the said new consolidated company, under the name of the Toledo, Cincinnati and St.
Louis Railroad Company (the defendant in this bill of com-
18 plaint), all the powers, privileges, immunities, and property,
real, personal, and mixed, belonging to the respective companies, parties to said agreement of consolidation, said consolidated company expressly recognizing and affirming the said several mortgages hereinbefore mentioned and the said bonds and coupons secured thereby and assuming payment of the same, the capital stock of said new consolidated company to be thirty millions of dollars, of which eleven millions was to be preferred stock and the balance thereof to be common stock.

Your orator further shows that it is informed and believes that said several agreements of consolidation were acted upon by said companies from said respective dates, although your orator says that it was not a party to said consolidations or either of them, and has not assented thereto or acquiesced therein.

VII. Your orator further shows that it is claimed by said defendant, The Toledo, Cincinnati and St. Louis Railroad Company, that it owns, by virtue of said last-mentioned consolidation, all the aforesaid property, rights, franchises, and assets of the said Toledo, Delphos and Burlington Railroad Company mentioned and described
in the two several mortgages aforesaid, and that the same
19 have become subject to the debts and liabilities of said con-
solidated company; but your orator says that whatever rights, if any, in or to the same the said Toledo, Cincinnati and St. Louis Railroad Company acquired by virtue of said consolidation, the same are subject and subordinate to the several mortgages hereinbefore stated, and that the railroad property, franchises, rights, and assets embraced in and covered by said mortgages are not, nor were they at the time of the said last-mentioned consolidation, sufficient to pay the amount of all the bonds and interest secured thereon by the several mortgages hereinbefore mentioned.

Your orator further shows that several of the constituent compa-

nies forming the said consolidated corporation known as the Toledo, Cincinnati and St. Louis Railroad Company heretofore executed various mortgages on the lines of railway and property owned by them respectively to your orator as trustee; which said mortgages in the aggregate cover, as your orator is informed and believes, substantially all of the property of said defendant, The Toledo, Cincinnati and St. Louis Railroad Company, and that default has been made in the payment of interest on all of the bonds secured
20 thereby except income bonds, and that said mortgages are as follows:

1. First mortgage (terminal trust), Toledo, Delphos and Burlington Railroad Company to Central Trust Company, trustee, dated June 21, 1880, to secure $250,000 of bonds and covering property in Toledo.

2. First mortgage, Toledo, Delphos and Burlington Railroad Company to Central Trust Company, trustee, dated July 1, 1880, to secure $1,000,000 of bonds and covering Dayton Division, from Delphos to Dayton.

3. First mortgage, Toledo, Delphos and Burlington Railroad Company to Central Trust Company, trustee, dated May 16, 1881, to secure $250,000 of bonds and covering Cincinnati Division, from Shakertown to Lebanon, Ohio.

4. First mortgage, Toledo, Cincinnati and St. Louis Railroad Company to Central Trust Company and Thomas A. Hendricks, trustees, dated July 23, 1881, to secure $3,000,000 of bonds, covering line from Kokomo to East St. Louis.

5. First mortgage, Toledo, Delphos and Burlington Railroad Company to Central Trust Company, trustee, dated May 16, 1881, to secure $2,250,000 of bonds and covering Southeastern Division, from Dayton to point at or near Ironton.

6. First mortgage, Iron Railroad Company to Central Trust Company, trustee, dated August 1, 1881, to secure $500,000 of
21 bonds and covering lines in Lawrence county, Ohio.

7. First mortgage, Cincinnati Northern Railway Company to Central Trust Company, trustee, dated October 1, 1880, to secure $1,000,000 of bonds and covering line from Waynesville to Cincinnati.

8. First mortgage, Spring Grove, Avondale and Cincinnati Railway Company to Central Trust Company, trustee, dated May 25, 1881, to secure $1,000,000 of bonds and covering line from Cincinnati to Spring Grove cemetery.

9. The mortgage particularly described in the second paragraph of this bill.

Your orator further shows that there are also other mortgages held by your orator as trustee and made by said several constituent railroad companies other than said Spring Grove, Avondale and Cincinnati Railway Company to secure income bonds which are junior to the several first mortgages hereinbefore recited and which are liens upon said divisions respectively, except that embraced in and covered by said terminal trust mortgage.

That your orator has commenced or is about to commence, in

courts of competent jurisdiction, proper legal proceedings or suits in equity to foreclose the said several mortgage liens and to
22 procure the appointment of a receiver of each of said separate lines covered by said respective mortgages, and that your orator is advised and believes that it will be for the interest of all the parties concerned, and especially of the several holders of the bonds and coupons secured by said several and respective mortgages, that the accounts and affairs of each of the said several lines or divisions of said consolidated company —, and that some one competent person should be appointed as receiver in each of the several suits or proceedings so as aforesaid commenced or to be commenced *or to be commenced* by your orator.

Your orator further says that, as it is informed and believes, the net earnings of some or one of the several divisions of the said Toledo, Cincinnati and St. Louis Railroad Company are sufficient, if kept separate, to pay the interest warrants or coupons of the first-mortgage bonds constituting a lien upon such separate division or divisions; but that the said Toledo, Cincinnati and St. Louis Railroad Company claims that the earnings of all the divisions of said road should go into the common fund of said consolidated company, and that no account should be kept of the separate
23 earnings and expenses of each division; and the earnings and income of all of said divisions are now, and ever since said last-mentioned consolidation have been, received and taken by said consolidated company, the said Toledo, Cincinnati and St. Louis Railroad Company, which is hopelessly insolvent, and appropriated to pay the expenses of said consolidated company, and wholly diverted from the payment of the interest or any part thereof due upon the said bonds secured by the several mortgages hereinbefore described and referred to; and your orator further shows that unless a separate account of the earnings and expenses of each of said divisions be carefully kept and preserved it will be impossible to ascertain whether any interest shall have become due and payable upon the income bonds hereinbefore mentioned or described.

Wherefore, and forasmuch as your orator is without remedy at law, your orator brings this its bill of complaint in behalf of all the holders of bonds and coupons secured by said mortgage first herein mentioned, and prays that Grenville D. Braman, who claims some interest, and the said Toledo, Delphos and Burlington Railroad Company may be made defendants hereto, and that
24 said consolidated company, the Toledo, Cincinnati and St. Louis Railroad Company, may be made to answer as to its interest; that process of subpœna may issue against each of them, and that they be required to make answer respectively to all and singular the allegations and charges herein contained; that the said mortgaged property be sold at a judicial sale, free of the claims of all parties hereto, upon such terms and conditions as this honorable court may deem most to the interest of the holders of said first-mortgage bonds and coupons, and that out of the proceeds of said sale the amount of bonds and interest secured by said first mortgage or deed of trust to your orator may be paid to your orator for

the holders thereof respectively, and that the balance, if any, of said proceeds of sale may be paid to your orator as trustee for the holders of said bonds and coupons secured by said second mortgage of said main-line division in order of priority, and that meanwhile and until such sale a receiver may be appointed of all and singular the premises and property aforesaid embraced within the said mortgage or deed of trust hereinbefore first set forth, and
25 that he may be authorized and empowered to maintain and operate said railroad of said main-line division, and to exercise all the powers usually granted to receivers, and to receive and to collect all the rents and other income from any of said mortgaged property, and to preserve the same and all parts of said mortgaged premises and property from waste and loss, and to make such payments and carry out and perform such contracts and agreements as may be to the interest of said several parties interested in said railroad, and for such other and further relief as to the court shall seem to be just and according to equity and good conscience.

BUTLER, STILLMAN & HUBBARD,
HOADLY, JOHNSON & COLSTON,
BAKER, HORD & HENDRICKS,
Counsel for Central Trust Company of New York.

UNITED STATES OF AMERICA,
Southern District of New York,
State of New York, City and County of New York, } ss:

Henry F. Spaulding, being duly sworn, says—

That he is the president of The Central Trust Company of
26 New York, the complainant in the above bill; that the said bill is true of his own knowledge except as to those matters which are therein stated to be upon information and belief, and as to those matters he believes it to be true.

H. F. SPAULDING.

Sworn to before me this 13th day of October, 1883.
[SEAL.] EDWARD L. ORISON,
U. S. Commissioner for the Southern District of New York.

27 And afterwards, to wit, at the November term of said court, on the 5th day of December, 1884, before the Honorable William A. Woods, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Now, on this 5th day of December, A. D. 1884, this cause came on to be heard upon the application of James M. Quigley, Charles T. Harbeck, and John McNab, committee and trustees for Toledo, Delphos & Burlington Railroad Company first-mortgage bondholders, made co-complainants in the above-entitled cause by order of this court rendered and entered November 10th, A. D. 1884, for leave to file an amendment to the bill of complaint heretofore filed in this cause October 20th, 1883, by the Central Trust Company of New York as trustees, which said application being heard by the court the same is now granted, and said co-complainants are now granted leave to

file their said amendment to said bill of complaint, which is accordingly done, and is in the words following, to wit:

28 Come now complainants, James M. Quigley, Charles T. Harbeck, and John McNab, and, by leave of court first had and obtained, file the following amendment to the original bill of complaint herein filed October 20, 1883, by the Central Trust Company of New York, as trustee, to wit:

1. Your orators aver that prior to March, 1878, the Toledo and Maumee Narrow-Gauge Railroad Company, a corporation of the State of Ohio, had organized a railroad company and projected and constructed and was operating a line of road from a point in the city of Toledo, Ohio, to the village of Maumee City, now South Toledo, Ohio, the line of said Toledo & Maumee Narrow-Gauge railroad then running along Park avenue and the side of Broadway, in said city, to a point on said street known as Broadway; that on or about the 25th day of March, 1878, the city of Toledo, by ordinance duly enacted, granted to the said Toledo & Maumee Narrow-Gauge Railroad Company and to the Toledo and Grand Rapids Railroad Company, another corporation of the said State of Ohio, the right of way over and upon and the right to construct and operate a

29 railroad through and upon Canal avenue, an alley lying between Vinton street and the Miami & Erie canal, Mill street, the northerly thirty (30) feet of the abandoned bed of the Miami & Erie canal, and Washington street from Erie street to Swan creek, in said city of Toledo, which said ordinance of March 25, 1878, was amended and the grant therein contained affirmed by an ordinance of said city duly passed by the common council thereof on the 6th day of October, 1879, and approved by the mayor of said city on the 10th day of October, 1879, to which said ordinances of said city your orators here now beg leave to refer the court with the same force and effect as if the same were here at large set forth; that under said grant of right of way and under other grants of right of way, purchases, and condemnations made by said Toledo & Maumee Narrow-Gauge Railroad Company and its successor by consolidation, the Toledo, Delphos & Burlington Railroad Company, in said city of Toledo said Toledo and Maumee Narrow Gauge Railroad Company and its successor, the Toledo, Delphos & Burlington Railroad Company, had, prior to the 17th day of January, 1880, constructed and was operating its said line of railway

30 in the said city of Toledo and from said city of Toledo to the village of Maumee City, now South Toledo, Ohio; that said line of railway so constructed and in operation belonging to and the property of the said Toledo & Maumee Narrow-Gauge Railroad Company and its said successor, the Toledo, Delphos & Burlington Railroad Company, extended from the southeasterly end of Washington street, in the city of Toledo, Lucas county, Ohio, thence northeasterly along Washington street to the canal lands, in said city; thence southwesterly along said abandoned canal lands to Swan creek, in said city; thence over said Swan creek and the Miami — Erie canal and over and along Mill street and Canal avenue, in said city, to the westerly limits thereof, and thence across the

westerly limit of said city of Toledo, and thence to the said village of Maumee City, now South Toledo, in said Lucas county, Ohio, and that upon its said right of way and property said Toledo & Maumee Narrow-Gauge Railroad Company and its said successor, the Toledo, Delphos & Burlington Railroad Company, then had constructed and owned certain shops, station grounds, side-
31 track grounds, main track and side tracks, and other terminal facilities at and in said city of Toledo.

2. And your orators further aver that the said Toledo & Grand Rapids Railroad Company did not build, construct, or own any continuous line of railroad upon the right of way granted by said city to the said Toledo & Maumee Narrow-Gauge Railroad Company and the Toledo & Grand Rapids Railroad Company, but that said Toledo & Maumee Narrow-Gauge Railroad Company and its successor by consolidation, the Toledo, Delphos and Burlington Railroad Company, did construct, own, and operate a line of railroad over and along and upon said right so granted by said city; that said Toledo & Grand Rapids Railroad Company did, as your orators are informed and believe, construct a line of railroad from the end of the said Toledo & Maumee Narrow-Gauge railroad at the village of Maumee City, now South Toledo, Ohio, to Waterville, in said State of Ohio, a distance of about six miles, and that at and prior to the 17th day of January, 1880, said Toledo and Grand Rapids Railroad Company did not own or possess any line of rail-
32 road or any railroad property in said city of Toledo other than the right conferred by the city of Toledo to build and operate a line of railroad, as hereinabove described, in said city jointly with the said Toledo and Maumee Narrow-Gauge Railroad Company, which said grant of way was never used by said Toledo & Grand Rapids Railroad Company by the construction and maintenance and operation of any continuous line of railroad thereon.

3. That on or about the first day of May, 1879, the said Toledo & Maumee Narrow-Gauge Railroad Company, the Toledo, Delphos & Indianapolis Railroad Company, a corporation organized and existing under the laws of the State of Ohio; the Delphos & Kokomo Railroad Company, a corporation organized and existing under the laws of the State of Ohio, and the Delphos, Bluffton & Frankfort Railroad Company, a corporation organized and existing under the laws of the State of Indiana, by proper and lawful agreements then made and entered into by and between said several railroad companies, did consolidate the stock and franchises of said sev-
33 eral railroad corporations into a single consolidated corporation under the name and style of the Toledo, Delphos & Burlington Railroad Company, said consolidated company then owning and operating a continuous line of road from the point hereinbefore designated in the city of Toledo to the village of Warren, in the State of Indiana, with an incompleted line of railroad from said village of Warren, in the State of Indiana, to the city of Kokomo, in said State of Indiana; that by said consolidation the said consolidated company, the Toledo, Delphos & Burlington Railroad Company, became the owner of all the railroad property,

rights of way, tracks, side tracks, depot grounds, station grounds, shops, machinery, and all terminal facilities of and belonging to the said Toledo & Maumee Narrow Gauge Railroad Company, subject only to the then outstanding debts and obligations of the said Toledo & Maumee Narrow-Gauge Railroad Company; that on the 17th day of January, 1880, the said consolidated company, the Toledo, Delphos & Burlington Railroad Company, executed its first mortgage or trust deed to secure the payment of $1,250,000 of bonds, conveying by said trust deed to the Central Trust Company of New York all of its said line of rail-
34 road completed and projected from said city of Toledo to the city of Kokomo, in the State of Indiana, together with all and singular the rights of way, road-bed, made or thereafter to be made, its tracks, side tracks, stations, depot grounds, sidings, bridges, rails, fences, machine shops, buildings, superstructures, and erections in any manner then appertaining to or which should thereafter appertain unto said line of railroad, together with all the engines, cars, machinery, supplies, tools, and fixtures which were then or should be at any time thereafter held, owned, or acquired by the said railroad company for use in connection with its said railroad, and all its depot grounds, yards, sidings, turnouts, sheds, machine shops, leasehold rights, and other terminal facilities; that said mortgage or deed of trust was duly recorded in each of the several counties into and through which said line of railroad ran, as set forth in the second paragraph of the original bill of complaint filed herein by the Central Trust Company of New York; that said mort-
gage was duly recorded in the county of Lucas and State of
35 Ohio on the 21st day of January, 1880; that said Central Trust Company accepted said trust and certified the said bonds issued under the trust deed, which said bonds are now outstanding; that on said 17th day of January, 1880, the said Toledo, Delphos & Burlington Railroad Company, by proper corporate action, did make, execute, and deliver to the said Central Trust Company its certain other deed of trust or mortgage to secure the payment of $1,250,000 of other bonds known as "income bonds;" that said Central Trust Company accepted said trust and certified said bonds, and that the same have been issued and are now outstanding.

4. And your orators aver that said first mortgage of the Toledo, Delphos & Burlington Railroad Company hereinabove described is a first and paramount lien upon all the railroad, rights of way, grounds, superstructures, buildings, property, and terminal facilities of any and every kind and nature whatsoever at any time belonging to the Toledo & Maumee Narrow-Gauge Railroad Company and at any time owned or acquired by the said Toledo, Delphos & Bur-
lington Railroad Company at and within the said city of To-
36 ledo, State of Ohio, whether owned or acquired before or since the execution of the said first mortgage of January 17th, 1880.

And your orators further aver that the said second mortgage or trust deed executed to secure the said bonds known as "income

bonds" is a second lien upon all of said property belonging either to the Toledo and Maumee Narrow-Gauge Railroad Company or to the Toledo & Delphos and Burlington Railroad Company by its said consolidation and upon all the property and rights conveyed to and acquired by said Toledo, Delphos and Burlington Railroad Company at any time since said consolidation.

5. Your orators further aver that after said Central Trust Company of New York had accepted the trust in said two mortgages described in the fourth paragraph of this amendment and after the said bonds secured by said two mortgages had been issued and were outstanding, to wit, on the 21st day of June, 1880, the said Toledo,
Delphos & Burlington Railroad Company executed its certain
37 other mortgage, known as the "terminal trust mortgage," by which said railroad company attempted to secure the payment of $250,000 of bonds, known as "series A, terminal trust first-mortgage bonds," by conveying and mortgaging all of its railroad, rights of way, property, and terminal facilities at and within the corporate limits of the said city of Toledo, State of Ohio; that in said terminal trust mortgage said Central Trust Company of New York was made trustee; that said Central Trust Company accepted said trust and certified said bonds, and your orators are informed and believe that the same have been issued and are now outstanding; but your orators aver that said terminal trust bonds and said terminal trust mortgage are not a first and prior lien upon any of the railroad, rights of way, property, and terminal facilities of the said Toledo, Delphos & Burlington Railroad Company at and within said city of Toledo, but that said terminal trust mortgage and said bonds issued thereunder are subject and junior to the said first mortgage executed on January 17, 1880, and the bonds issued thereunder, and are subject and junior to the said second
mortgage executed by said Toledo, Delphos & Burling-
38 ton Railroad Company on said 17 day of January, 1880, before set forth; and your orators aver that they are informed and believe that the holders of the bonds issued under said terminal trust mortgage and the Central Trust Company, as trustee in said terminal trust mortgage, are claiming and asserting that said terminal trust mortgage is a first and paramount lien upon all the railroad property and terminal facilities of said railroad company at and within said city of Toledo, and that the same is superior in lien to the said first mortgage executed on said 17th day of January, 1880, and that said bondholders are seeking and intending to foreclose their said mortgage and sell said railroad and terminal facilities at and within said city of Toledo to secure the payment of their said bonds, to the great prejudice and injury of your orators as the holders of the bonds issued under the said first mortgage of January 17, 1880, hereinabove described.

6. Your orators further aver that on or about the 12th day April,
1881, the said Toledo and Grand Rapids Railroad Company
39 conveyed all of its line of railroad and property by proper deed of conveyance to the said Toledo, Delphos and Burlington Railroad Company, but that prior to said conveyance, to wit, on the

4th day of September, 1880, said Toledo and Grand Rapids Railroad Company made and executed its certain pretended mortgage and trust deed pretending to convey to the said The Central Trust Company of New York all of its railroad, rights, and property at and within the said city of Toledo, but your orators aver that said Toledo and Grand Rapids Railroad Company owned and possessed at said date last named no railroad, buildings, superstructures, property, or terminal — at and in said city of Toledo other than the naked grant by said city to construct and operate a line of railroad on and along Canal avenue, in said city, jointly with the said Toledo & Maumee Narrow-Gauge Railroad Company, as hereinbefore set forth, and therefore your orators aver that said pretended mortgage of September 4, A. D. 1880, conveyed nothing to said Central Trust Company excepting only said unused grant of said city of Toledo.

40 7. Your orators further aver that all the railroad, property, rights, and terminal facilities alleged to be covered by the said terminal trust mortgage were owned by and in the possession of and were being used by the said Toledo, Delphos and Burlington Railroad Company at the time of the execution of the said mortgage of January 17, 1880, and at the time the said bonds held and represented by your orators were issued under said first mortgage or have been acquired by the said Toledo, Delphos and Burlington Railroad Company and its successor by consolidation, the Toledo, Cincinnati & St. Louis Railroad Company, since the execution of said first mortgage of January 17, 1880, and are all subject to said mortgage as a first and paramount lien thereon.

Your orators would further show *that* court that since the execution of their said first mortgage, to wit, on or about the 9th day of September, 1880, the said Toledo, Delphos and Burlington Railroad Company bought of the city of Toledo a large and valuable tract of land in said city adjoining and adjacent to the right of way of

41 said railroad, paying said city therefor the sum of $10,000.00, a more particular description of which said lands is as follows, to wit: All that part of the lands known as the Manhattan Branch of the Miami & Erie canal, now abandoned, which are included and lie between Swan creek and Washington street, in the city of Toledo, Lucas county, State of Ohio, not heretofore sold, and especially excepting a certain part of said lands lying between Erie and Washington streets, as above, deeded by the said city of Toledo, on the 10th day of March, A. D. 1880, to Mary Rodetto; also excepting that portion of said described lands heretofore set apart for railroad purposes by the city of Toledo by ordinance of the common council of the city of Toledo passed October, A. D. 1879, and that said Toledo, Delphos & Burlington Railroad Company; by and through its agent, George William Ballou, made defendant hereto, purchased and acquired certain other valuable lands and rights in said city of Toledo, all of which your orators are not able to describe with particularity, but part of which are described as follows:

42 The northeast 90 feet of the north half of lot 290, in the Port Lawrence division of the city of Toledo, Lucas county, Ohio, being 30 feet front on Washington street and extending back

in depth 90 feet; also that part of lot 17, river tract nine, township three, U. S. reserve, &c., described as commencing on the east line of river tract nine aforesaid at a point 356 feet north from the center of South street of said city, running thence westerly and parallel with the said center of said South street to the southeast line of Canal avenue extended; thence southwest along the southeast line of said Canal avenue extended to the west line of said lot 17; thence north along said west line to the Wabash & Erie canal; thence northeast along the line of the canal to the east line of said river tract nine; thence north along the said east line to the place of beginning, containing five and nine-tenths acres, more or less; also lots number- 69 to 98, both inclusive, of the East South Street Addition to the city of Toledo, Lucas county, Ohio; also that part of lot number 15, in river tract 10, U. S. reserve, &c., between Miami & Erie canal and a line parallel thereto 400 feet southeasterly therefrom, which said lands your orators aver are
43 subject to the lien of their said mortgage of January 17, 1880, as after-acquired property of said Toledo, Delphos & Burlington Railroad Company.

Your orators would further aver that several other pieces of property of great value to said railroad company have, since the execution of said mortgage of January 17, 1880, been purchased or condemned or contracted for to enable the said Toledo, Delphos & Burlington Railroad Company and its successor, the Toledo, Cincinnati & St. Louis Railroad Company, to extend its tracks to the navigable portion of the river in said city of Toledo; that your orators are unable to particularly describe said lands, rights of way, and privileges, but aver that the same are of great value, and that they are subject to the lien of the said mortgage of January 14, 1880, as after-acquired property of said railroad company; that your orators are informed and believe that the legal title to some of said lots and lands last above mentioned has been taken in the name of one George William Ballou, an officer or agent of said Toledo, Delphos and Burlington Railroad Company, and
44 its successor by consolidation, the Toledo, Cincinnati and St. Louis Railroad Company, but that said lands so conveyed to said Ballou and of which he holds the legal title do in equity belong to and are the property of the said Toledo, Delphos & Burlington Railroad Company and its said successor by consolidation, the Toledo, Cincinnati & St. Louis Railroad Company, and are subject to your orators' said mortgage, the same being held only in trust by said Ballou; and your orators aver that a partial and the best description of which they are capable of said lands and rights, the title to which was taken and is held by Ballou in his own name, and of which the said Toledo, Delphos & Burlington Railroad Company and its said successor by consolidation, the Toledo, Cincinnati & St. Louis Railroad Company, are the equitable owners, and which said lands, your orators aver, are held only in trust for said railroad companies by said Ballou and are subject to the said first mortgage of January 17, 1880, is as follows, to wit: 1. Lots number- 65, 66, 67, & 68 of Shaw's & Wells' Addition to the city of Toledo, Lucas county, Ohio.

45 2. Lots 79, 80, 81, 82, 83, & 84 of Shaw's & Wells' 2nd Addition to the city of Toledo, Lucas county, Ohio.

3. Also lots Nos. 8 & 9 of river tract No. 7, in the U. S. reserve of 12 miles square at the foot of the rapids of the Miami of Lake Erie, lying southeasterly of the right of way of the Toledo, Wabash and Western railway, and running from said right of way to the channel of the Maumee river.

4. Being part of lot No. 36, lying on the northwest side of Sophia street and on the southeast side of Conant street, in South Toledo, formerly Maumee City, more fully described as follows:

Beginning at a point on the northwesterly side of Sophia street 117 feet southeast from the west corner of Sophia street and Conant street, thence southwesterly along the northwesterly line of said Sophia street a distance of 348 feet, more or less, to the north corner of Sophia and Allen streets; thence in a northwesterly direction along the northeasterly line of Allen street a distance of 250 and $\frac{8}{10}$ feet to a point; thence in a northwesterly direction along a line parallel with the centre line of Sophia street a distance of 465 feet, more or less, to the southwesterly line of Conant street, a dis-

46 tance of $184\frac{8}{10}$ feet to a point; thence southwesterly parallel with the centre line of Sophia street 117 feet to a point; thence southeasterly at right angles to the center line of Sophia street, a distance of 60 feet to the northwesterly line of Sophia street, to the place of beginning, the whole containing $2\frac{1}{2}$ acres of land, more or less, situated in Lucas county, Ohio.

5. All that part of lot No. 17, in river tract No. 9, in the U. S reserve of 12 miles square at the foot of the rapids of the Miami at Lake Erie, which lies between the tract of the Wabash, St. Louis & Pacific railway and the Maumee river, all in the city of Toledo, Lucas county, Ohio, excepting all rights belonging and attached to said above-described lands in and to the riparian rights of the island in the Maumee river, which rights are reserved to the benefit of Isaac M. Poe, a former grantor of said lands.

6. All that portion of lot No. 15, in river tract No. 8, in the U. S. reserve of 12 miles square at the foot of the rapids of the Miami of Lake Erie, which lies between the land owned by the Toledo,

47 Wabash & Western Railway Company and the Maumee river, together with all the riperian rights belonging to the same, said land being situated in the city of Toledo, Lucas county, Ohio; the conveyances to which said lands and premises last above described and mentioned the said Ballou took in his own name and to himself as legal owner thereof while he was acting as the financial agent and trustee for the said Toledo, Delphos & Burlington Railroad Company and its successor, the Toledo, Cincinnati & St. Louis Railroad Company, without right and in violation of his duty and obligations as such financial agent and trustee aforesaid, all payments upon said lands and premises being made by said Ballou out of funds belonging to said railroad company.

Your orators further show that they are informed and believe that the said Ballou and Margaret C. Ballou, his wife, on or about the 29th day of November, 1880, by a pretended mortgage or convey-

ance of some sort, pretended to convey certain of said property of which he so held the legal title to the Central Trust Company of New York for a consideration of $40,000.00 face value of
48 said terminal bonds; but your orators aver that said transaction and said pretended mortgage were without authority of law and are invalid and void.

And your orators further aver that they are informed and believe that E. B. Phillips, Charles L. Luce, John T. Newton, Martha Stubbins, George Stebbins, and Thomas H. Hamilton are asserting and claiming some right or interest in some of the lands and property in said city of Toledo belonging to and equitably the property of the said Toledo, Delphos & Burlington Railroad Company and its successor, the Toledo, Cincinnati & St. Louis Railroad Company, and subject to said first mortgage of January 17, 1880, wherefore they are made defendants to answer as to any right or interest claimed by them or either of them.

8. Your orators would further show that after the execution of said mortgage of January 17, 1880, by said Toledo, Delphos & Burlington Railroad Company upon its road and property extending from said city of Toledo, Ohio, to said city of Kokomo, Indiana, about $240,000.00 of the cash proceeds of the sale of said bonds
49 issued under said first mortgage was expended in constructing what was called the "Kokomo Extension," which was the line of said railroad from the village of Warren, in the State of Indiana, to the city of Kokomo, in said State of Indiana; that said extension was so built and constructed with the cash proceeds of the sale of said first-mortgage bonds of said Toledo, Delphos & Burlington Railroad Company, but that the said line of railroad from Warren to Kokomo aforesaid was constructed under the franchises of a corporation of the State of Indiana known as the Frankfort, St. Louis and Toledo Railroad Company, which said last-named company was not taken into the consolidation forming the said Toledo, Delphos & Burlington Railroad Company; but your orators aver that on or about March 27, 1880, the said Frankfort, St. Louis & Toledo Railroad Company made and entered into a contract with a building firm known as H. R. Low & Co. for the building of its line of road between said village of Warren and said city of Kokomo, by the terms and conditions of which said contract the said H. R. Low & Company were to receive in full payment for the construction and equipment of said road
50 (1) the local aid voted thereto by the municipalities along the line of said road and local contributions to the amount in the aggregate of four thousand dollars per mile; (2) the first-mortgage bonds of said Frankfort, St. Louis & Toledo Railroad Company to the amount of six thousand dollars per mile; (3) eight hundred thousand dollars of the capital stock of said Frankfort, St. Louis & Toledo Railroad Company, the same being by the terms of said contract all of the capital stock thereof; that after making and entering into said contract with said Frankfort, St. Louis & Toledo Railroad Company the said contractors, H. R. Low & Company, under the firm name and style of A. G. Wells & Company, the part-

ners in both firms being the same persons, entered into a contract on July 8, 1880, with said Toledo, Delphos & Burlington Railroad Company for the building of the same line of road, to wit, from the village of Warren to the city of Kokomo, by the terms of which said contract the said Toledo, Delphos & Burlington Railroad Company agreed to pay to the said A. G. Wells & Company $5,000.00 per mile, in cash, for the construction of said railroad from Warren to Kokomo, and said Toledo, Delphos & Burlington Railroad
51 Company, in addition to the said sum of $5,000.00 per mile, to be paid in cash to said A. G. Wells & Company, further agreed that there should also be paid to said A. G. Wells & Company all local aid of any kind, but without endorsement or guaranty of the said Toledo, Delphos & Burlington Railroad Company to the said A. G. Wells & Company; and the said A. G. Wells & Company upon their part agreed, for said consideration to be paid to them, as above set forth, by the said Toledo, Delphos and Burlington Railroad Company, that they, the said A. G. Wells & Company, would procure and vest in the said Toledo, Delphos & Burlington Railroad Company, by a good and indefeasible title, free from conditions or encumbrances, a right of way sixty (60) feet in width, thirty (30) feet on each side of the center line of the railroad, with such additional widths as might be necessary for turnouts, sidings, transfers, depots, water stations, and barrow pits, which right of way said A. G. Wells & Company agreed should be thoroughly cleared of all standing timber, all brush, logs, useless timber, or rubbish of any kind should be burned up or removed, and all standing trees outside of the right of way, that might endanger the track by falling, should be chopped down; and said A. G. Wells & Company further agreed by their
52 said contract to pay for and convey to the said Toledo, Delphos & Burlington Railroad Company depot grounds of such size and at such points as should be designated by the said railroad company, said depot grounds to be of sufficient size and so located as to enable the company to do the business at the particular stations conveniently and well: Provided, however, that in towns and villages where said railroad should run through streets or alleys a right of way not less than sixteen (16) feet in width should be procured, the title thereto to be the best which the municipality and the adjacent owners could grant, and free from conditions or requirements that would interfere with the safe, convenient, and economical operation of the railroad, said contract further providing that the said railroad should be built and constructed in a substantial and workmanlike manner, to be laid with iron rails of approved pattern, weighing forty (40) pounds to the lineal yard, joined with fish-plates and bolts, said track to be laid with three thousand (3,000) ties to the mile, evenly spread at right angles to said track; that by their said contract the said A. G. Wells & Company, in addition to procuring and vesting in said Toledo, Delphos & Burlington Railroad Company the right of way, depot grounds, station grounds, and other
53 real estate, and in addition to the procurement of all material and construction of said railroad, further contracted and agreed to deliver to said Toledo, Delphos & Burlington Railroad

Company all of the bonds issued by the Frankfort, St. Louis & Toledo Railroad Company and all of the capital stock of said Frankfort, St. Louis & Toledo Railroad Company, excepting only that paid for local aid, and agreeing that the amount of capital stock so delivered by said A. G. Wells & Company to the said Toledo, Delphos & Burlington Railroad Company should be above two-thirds of the total amount of capital stock issued by said Frankfort, St. Louis & Toledo Railroad Company; and said A. G. Wells & Company, by their said contract and in consideration of the payments to be made to them by the said Toledo, Delphos & Burlington Railroad Company, agreed and contracted to pay and discharge all the liens and floating debt of said Frankfort, St. Louis & Toledo Railroad Company, so that when said railroad should be completed and delivered to said Toledo, Delphos & Burlington Railroad Company said Frankfort, St. Louis & Toledo Railroad Company should have no debts outstanding except only its said bonds, delivered by said A. G. Wells & Company to the said Toledo, Delphos & Burlington Railroad Company.

54 And said A. G. Wells & Company further agreed to procure the directors of said Frankfort, St. Louis & Toledo Railroad Company, one by one, to resign, and that they would procure the election of a board of directors to be designated by the said Toledo, Delphos & Burlington Railroad Company or its board of directors or officers; that said line of road between Warren and Kokomo was constructed by said A. G. Wells & Company under the said last-named contract between said A. G. Wells & Company and the Toledo, Delphos & Burlington Railroad Company; and your orators are informed and so aver that the said A. G. Wells & Company did in all things comply with their said contract, and did pay off and satisfy all claims and floating debt against the said Frankfort, St. Louis and Toledo Railroad Company, and did deliver to said Toledo, Delphos & Burlington Railroad Company more than two-thirds of the capital stock issued by said Frankfort, St. Louis & Toledo Railroad Company, as by said contract required.

And your orators further aver that on or about the 17th of September, 1880, the said Frankfort, St. Louis and Toledo Railroad Company executed its mortgage for $264,000.00 to one Con-

55 rad N. Jordan as trustee, and caused the same to be duly recorded in the counties through which said line of railroad runs; and your orators are informed and aver, upon information and belief, that only $90,000.00 of said bonds so provided for by said mortgage were ever issued, and that said $90,000.00 of bonds were issued to H. R. Low & Company under their said contract with the said Frankfort, St. Louis & Toledo Railroad Company, as hereinabove mentioned and described, and that the said A. G. Wells & Company, being the same persons as those composing the firm of H. R. Low & Company, did, under their said contract last above described between them, the said A. G. Wells & Company and the Toledo, Delphos & Burlington Railroad Company, deliver to the proper officer of the said Toledo, Delphos & Burlington Railroad Company the said $90,000.00 of bonds issued by the said Frankfort,

St. Louis & Toledo Railroad Company and delivered to them, which said bonds were so delivered by said A. G. Wells & Company to the Toledo, Delphos & Burlington Railroad Company under and pursuant to their said contract, and that no other bonds were ever issued under the said Frankfort, St. Louis & Toledo Railroad Company first mortgage, as your orators are informed and believe.

56 And your orators further show the court that the said $90,000.00 of Frankfort, St. Louis & Toledo Railroad Company first-mortgage bonds issued and delivered to the said Toledo, Delphos and Burlington Railroad Company under said contract between said railroad company and said A. G. Wells & Company are now in the custody and possession of one Herbert Steward, of Boston, an officer of the Toledo, Delphos & Burlington Railroad Company and of its successor, the Toledo, Cincinnati & St. Louis Railroad Company; that said bonds so held by said Steward have never been issued by either the Toledo, Delphos & Burlington Railroad Company or by its successor, the Toledo, Cincinnati & St. Louis Railroad Company, but the same are and were held for cancellation, and your orators make the said Steward, as custodian and possessor of said $90,000.00 of bonds, defendant hereto, and ask the court that said bonds may be brought into court for cancellation.

And your orators would further show the court that afterwards and while the said Toledo, Delphos & Burlington Railroad Company held and owned two-thirds of the capital stock and all the bonds ever issued by the said Frankfort, St. Louis & Toledo Rail-

57 road Company, to wit, on the 25th day of February, A. D. 1882, the said Toledo, Delphos & Burlington Railroad Company and the said Frankfort, St. Louis & Toledo Railroad Company entered into a consolidation with the Toledo, Cincinnati & St. Louis Railroad Company of the States of Indiana and Illinois, forming by said consolidation the Toledo, Cincinnati & St. Louis Railroad Company.

And your orators aver that said line of railroad from Warren to Kokomo was built and constructed with the proceeds arising from the sale of the bonds secured by the said first mortgage of the Toledo, Delphos & Burlington Railroad Company, executed January 17, 1880, and that the said corporate franchises of the said Toledo, Delphos & Burlington Railroad Company authorized the construction of a railroad from said village of Warren to said city of Kokomo; and your orators aver that by reason of the facts herein set forth the said Toledo, Delphos & Burlington Railroad Company was at the time of said last-mentioned consolidation the legal owner of two-thirds of the capital stock of said Frankfort, St. Louis and Toledo Railroad Company and the legal and equitable owner of all

58 the bonds ever authorized or issued by said Frankfort, St. Louis & Toledo Railroad Company, and was and is the legal and equitable owner of said line of railroad from said village of Warren to said city of Kokomo aforesaid, and of all and singular the right of way and all depot and station grounds and superstructures of and pertaining to said railroad, and that said line of rail-

road is subject to the said mortgage or trust deed of January 17, 1880, as a first and paramount lien thereon.

Your orators further aver that they are informed and believe that since his appointment as receiver by the order of this court in this cause William J. Craig, as receiver, has purchased and taken in his own name as such receiver the legal title to certain lots and lands at and within the said city of Toledo for the purpose of providing right of way and grounds for said railroad to approach the said river front in said city; and your orators aver that whatever lands have been so bought by said receiver are subject to the lien of the mortgage securing the bonds represented by your orators as a first and paramount lien.

Your orators further show the court that Robert Davidson, John Anderson, Jr., Charles Cameron, John Hauldworth, Louis
59 Lisler, C. F. Bowie, C. H. Bonsfield, James King, P. Rotenburg, O. Dummett, R. A. Muir, and Henry M. Leavitt, describing themselves as holders of bonds issued under said Toledo, Delphos & Burlington Railroad Company terminal trust first mortgage and as subjects of the Kingdom of Great Britain, as co-complainants with the Central Trust Company of New York, as trustee in the terminal trust mortgage, have instituted a certain suit in equity in the United States circuit court for the northern district of Ohio, claiming and asserting that said Toledo, Delphos & Burlington terminal trust first mortgage is a first lien and paramount to the lien of the said first mortgage of January 17, 1880, securing the bonds represented by your orators upon all the line of railroad, rights, lands, property, and terminal facilities of the said Toledo, Delphos & Burlington Railroad Company at and within said city of Toledo, and are seeking to foreclose said terminal trust mortgage as a first and paramount lien upon said property, to the great injury and prejudice of your orators.

And your orators would further show the court that on or about October 20, 1883, James Stevenson and Jeremiah Dummett,
60 as bondholders holding bonds issued under the said Toledo, Delphos & Burlington terminal trust first mortgage, filed in said United States circuit court for the northern district of Ohio their bill in equity against the Toledo, Delphos & Burlington Railroad Company, the Central Trust Company of New York, and the Toledo, Cincinnati & St. Louis Railroad Company; by which said bill said bondholders, Stevenson and Dummett, whose citizenship is to your orators unknown, are claiming and asserting that said terminal trust mortgage is a first lien upon the property and terminal facilities of the said Toledo, Delphos and Burlington Railroad Company at and within said city of Toledo; which said cause has been consolidated with the said suit of said The Central Trust Company of New York to foreclose said terminal trust mortgage.

And your orators further show the court that at the time said last two suits hereinabove mentioned were brought all of the railroad and property of the Toledo, Cincinnati & St. Louis Railroad Company, successor by consolidation to the Toledo, Delphos & Burlington Railroad Company, was in the possession and under the control

and was being operated by a receiver appointed by this court under a bill in equity filed in this court on the last day of August,
61 1883, by Grenville D. Bramen against the said The Toledo, Cincinnati & St. Louis Railroad Company and others.

And your orators would further show that while said railroad and property was so in the possession and under the jurisdiction and control of this court by its receiver appointed in said suit of Bramen, to wit, on the 20th day of October, 1883, the Central Trust Company of New York, as trustee of the Toledo, Delphos & Burlington Railroad Company first mortgage dated January 17, 1880, filed its original bill for the foreclosure of said first mortgage; to which said bill this is an amendment filed by leave of court granted to your orators, who have been by proper order of court made co-complainants with said Central Trust Company of New York in said original bill.

And your orators would further show that under said last-mentioned cause and under the bill filed therein by said The Central Trust Company William J. Craig was appointed receiver of all of the said railroad and property covered by said mortgage of January 17, 1880, and is now in possession thereof as such receiver.

9. Wherefore, and inasmuch as you orators are without
62 remedy at law as to the matters and facts above set forth, your orators file this their amendment to the said original bill of the said Central Trust Company of New York, filed October 20, 1883; and your orators pray that the said George William Ballou and Margaret C. Ballou, his wife, and the said Robert Davidson, John Anderson, Jr., Charles Cameron, John Huldsworth, Louis Leisler, C. F. Bowie, C. H. Bonsfield, James King, P. Rottenburg, O. Dummett, R. A. Mair, Henry M. Leavitt, James Stevenson, Jeremiah Dummett, E. B. Phillips, Charles Luce, John T. Newton, Martha Stebbins, George Stebbins, Herbert Steward, and the Central Trust Company of New York, as trustee of the Toledo, Delphos & Burlington Railroad Company terminal trust first mortgage and as grantee or mortgagee of George William Ballou and wife and as mortgagee of the Grand Rapids Railroad Company, may each and all of them be made defendants hereto; that process of subpœna may issue against each of them, and that they be required to make answer respectively to all and singular the allegations, charges, and averments in this amendment contained, but not under oath, answers under oath to this amendment being
63 hereby specifically waived; that the said George William Ballou may be required to answer fully as to any interest he may claim in any lands and property in said city of Toledo, the title to which was taken by him in his own name, purchased and acquired since the consolidation forming the Toledo, Delphos & Burlington Railroad Company, said lands having been purchased for railroad uses and terminal facilities of said Toledo, Delphos & Burlington Railroad Company and its successor by consolidation, the said Toledo, Cincinnati & St. Louis Railroad Company; that the said Central Trust Company of New York may be required to make answer as to all the allegations and averments herein con-

tained, and especially as to any right, title, or interest it may have or claim to have in and to any lots and lands conveyed or mortgaged to it by George William Ballou and as to any consideration paid or delivered by said Central Trust Company for such mortgage or conveyance, and also as to any claim asserted by said Central Trust Company that said terminal trust mortgage is prior in lien to the said first mortgage of January 17, 1880,
64 securing the bonds represented by your orators; and, inasmuch as Robert Davidson, John Anderson, Jr., Charles Cameron, John Hauldsworth, Louis Leisler, C. F. Brown, C. H. Bonsfield, James King, P. Rotenburg, O. Dummett, R. A. Mair, and Henry M. Leavitt represent themselves as being subjects of the Kingdom of Great Britain, your orators pray that if at any time said defendants or either of them come within the proper jurisdiction of this court and within reach of the process thereof that proper subpœnas may issue and be served upon them or either of them so coming within the jurisdiction of this court.

And your orators pray that the said Toledo, Delphos & Burlington Railroad Company first mortgage, executed and dated January 17, 1880, may be held and decreed to be a first and paramount lien upon all the property, railroad, tracks, buildings, superstructures, rights of way, lands, depot grounds, privileges, franchises, and all terminal facilities at and within the said city of Toledo that at any time belonged to or were acquired by the said Toledo & Maumee Narrow-Gauge Railroad Company and that belonged to or were acquired by the said Toledo, Delphos & Burlington Railroad
65 Company and its successor by consolidation, the said Toledo, Cincinnati & St. Louis Railroad Company, and that said first mortgage of January 17, 1880, may be held and decreed to be a lien upon said property superior and paramount to the lien of the said Toledo, Delphos & Burlington Railroad Company terminal trust first mortgage, dated June 21, 1880, and executed July 1, 1880; that the said Herbert Steward may be ordered to bring into court the said bonds issued by the Frankfort, St. Louis & Toledo Railroad Company; that said bonds may be cancelled and said mortgage decreed, released, and satisfied, and that said line of railroad from Warren to Kokomo may be decreed to be the property of the Toledo, Delphos & Burlington Railroad Company and subject to said mortgage of January 17, 1880, as a first and paramount lien thereon; and your orators pray that the said first mortgage of January 17, 1880, may be foreclosed by proper decree of this court and the said mortgaged property sold and the proceeds of sale applied to the payment of the bonds and coupons secured by said first mortgage
66 of January 17, 1880, as prayed by and in the said original bill of complaint to which this is an amendment; and your orators pray for all such other and further relief as to the court shall seem to be just and according to equity and good conscience.

McDONALD, BUTLER AND MASON,
Solicitors for Complainants, James M. Quigley, Charles F. Harbeck, and John McNab.

Indianapolis, Ind., December 5, 1884.

And afterwards, to wit, at the November term of said court, on the 12th day of November, 1885, before the Honorable Walter Q. Gresham and Honorable William A. Woods, judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

67 This cause coming on to be heard at this term of this court for final decree, come now complainant The Central Trust Company of New York, by Butler, Stillman & Hubbard, Hoadly Johnson & Colston, and Baker, Hord & Hendricks, its solicitors, and James M. Quigley, Charles T. Harbeck, and John McNab, complainants, by McDonald, Butler & Mason, their solicitors; The Toledo, Cincinnati & St. Louis Railroad Company, by Henry D. Hyde, its solicitor, and Moses Bradford, by William W. Woolen, his solicitor, and Herbert Steward, by Harrison, Miller & Elam, his solicitors, and, it appearing to the satisfaction of the court that on October 27, 1883, the Toledo, Delphos & Burlington Railroad Company entered its full appearance in this cause, the said Toledo, Delphos and Burlington Railroad Company is now in open court three times solemnly called and comes not, but wholly makes default herein, and Grenville D. Braman, defendant herein, is now in open court three times solemnly called and comes not, but wholly makes default herein.

68 It is therefore considered, adjudged, and decreed by the court that the matters and facts averred in the complainants' original bill of complaint and amendment thereto are taken as confessed and true as against said defaulting defendants, the said Toledo, Delphos and Burlington Railroad Company and Grenville D. Braman; and now, on motion, Robert Davidson, John Anderson, Jr., Charles Cameron, John Hauldsworth, Louis Leisler, C. F. Bowie, C. H. Bonsfield, James King, P. Rotenburg, O. Dummett, R. A. Mair, Henry M. Leavitt, James Stevenson, Jeremiah Dummett, E. B. Phillips, Charles Luce, John T. Newton, Martha Stebbins, George Stebbins, George William Ballou, and Margaret C. Ballou are dismissed from this cause as defendants thereto; and now this cause is set down for hearing and decree upon the original bill and amendment thereto, and the answers and replications thereto, and the cross-bill of said Bradford, and complainants' motion to dismiss the same, and upon the exhibits filed with the original bill and amendment thereto, the documentary evidence, reports of masters, and testimony taken and filed in court in this cause, and the stipulations on file and of record, and, the cause having been argued by

69 counsel, *and* the court, being fully advised, doth find the equity of the case to be with the complainants, and that all and singular the allegations, averments, and charges in the original bill of complaint and the amendment thereto are true, and thereupon the court finds and decrees as follows:

1st. The court finds and decrees that the complainants' motion to dismiss the cross-bill of Moses Bradford be, and the same is hereby, sustained, and said cross-bill of Moses Bradford is hereby dismissed at the cost of said cross-complainant, Moses Bradford.

2nd. That on the 17th day of January, 1880, the Toledo, Delphos & Burlington Railroad Company, a corporation created by and ex-

isting under the laws of the States of Ohio and Indiana, formed by the consolidation of certain corporations theretofore existing, known as the Toledo and Maumee Narrow-Gauge Railroad Company, the Toledo, Delphos & Indianapolis Railway Company, the Delphos & Kokomo Railway Company, and the Delphos, Bluffton and Frankfort Railroad Company, was engaged in the construction and equipment of a line of railroad from Toledo, Ohio, to Kokomo, Indiana; that on said last-mentioned day said Toledo, Delphos & Bur-
70 lington Railroad Company, by its president and secretary, under its corporate seal and in pursuance of a resolution to that end duly adopted by the board of directors of said corporation on the 12th day of December, 1879, which resolution was thereafter and before the execution of the bonds and mortgages hereinafter mentioned duly ratified by the vote of a majority of the stockholders of said corporation at a meeting duly convened and held on the 17th day of January, 1880, said Toledo, Delphos & Burlington Railroad Company did execute its one thousand two hundred and fifty bonds, for the sum of $1,000 each, dated the first day of January, 1880, payable on the first day of January, 1910, bearing six per cent. interest per annum, payable semi-annually on the first days of January and July in each and every year in the city of New York, each of said bonds having interest warrants or coupons for the payment of the interest as aforesaid attached thereto, and that the said Toledo, Delphos & Burlington Railroad Company issued and sold said one thousand two hundred and fifty bonds with said interest warrants or coupons attached thereto, all of which said bonds were,
71 before the same were issued, duly certified by the complainant The Central Trust Company of New York, and said bonds are now in the hands of divers and sundry persons as holders thereof, and that with the proceeds of sale of said bonds the said corporation proceeded to construct, equip, maintain, and operate said railway.

3rd. That to secure the payment of said bonds and coupons the said Toledo, Delphos & Burlington Railroad Company did, on the said 17th day of January, 1880, in pursuance of the provisions of said resolution, execute and deliver unto The Central Trust Company of New York, complainant herein, a corporation created by and existing under the laws of the State of New York, and a citizen of said State, a certain deed or indenture of trust and mortgage, which was duly recorded in the counties of Lucas and Henry, Ohio, on January 21, 1880; in the counties of Wood and Putnam, Ohio, on January 22, 1880; in the counties of Allen and Van Wert, Ohio, on January 23, 1880; in the counties of Adams and Wells, Indiana, on January 24, 1880; in the counties of Huntington and Wabash, Indiana, on January 26, 1880; in the counties of Grant, and
72 Howard, Indiana, on January 27, 1880, and in the county of Miami, Indiana, on January 28, 1880; in and by which said deed of trust and mortgage the said railroad company conveyed unto The Central Trust Company of New York, complainant herein, and to its successor or successors in trust and for the uses and purposes thereby created all and singular the line of railroad of the said Toledo, Delphos & Burlington Railroad Company, as the same then

was or thereafter might be constructed between Toledo, Lucas county, Ohio, through the counties of Lucas, Wood, Henry, Putnam, Allen, and Van Wert, in the State of Ohio, and the counties of Adams, Wells, Huntington, Wabash, Miami, Grant, and Howard, in the State of Indiana, to the city of Kokomo, Indiana, being about one hundred and eighty miles in length, together with all and singular the right of way, road-bed made or to be made, track laid or to be laid between the terminal points aforesaid, together with all the stations, depot grounds, rails, fences, bridges, sidings, engine-houses, machine shops, buildings, erections, in any way then or thereafter appertaining unto said railroad, together with all the engines, cars, machinery, supplies, tools, and fixtures then or
73 at any time thereafter held, owned, or acquired by the said railroad company for use in connection with its line of railroad aforesaid, and all depot grounds, yards, sidings, turnouts, sheds, machine shops, leasehold rights, and other terminal facilities then or thereafter owned by the said railroad company, together with all and singular the powers and franchises belonging thereto and the tolls, income, and revenue to be levied by and derived therefrom.

4th. That after the execution and delivery of said deed of trust and mortgage and the issuing of the said bonds and coupons secured thereby, to wit, in the month of February, 1882, the said Toledo, Delphos & Burlington Railroad Company entered into an agreement of consolidation by and between said last-named company and the Frankfort, St. Louis & Toledo Railroad Company, a corporation of the State of Indiana, and the Toledo, Cincinnati & St. Louis Railroad Company, a corporation created by and existing under the statutes of the States of Indiana and Illinois, said consolidation to take the name of the Toledo, Cincinnati & St. Louis Railroad Company, which said consolidation went into force
74 and took effect on or about the 28th day of February, 1882, the same having been duly ratified by the directors and stockholders of said several companies in accordance with law; that by said consolidation the said constituent companies entering into the same became one corporation, under the name and style of the Toledo, Cincinnati & St. Louis Railroad Company, by means of which said consolidation and by virtue of the laws in that behalf enacted the said new company became vested with all and singular the property, estate, privileges, and franchises of each and every of the said constituent corporations entering into said consolidation, and subject to all the debts, liabilities, and obligations of said constituent corporations entering into said consolidation.

5th. It is further adjudged and decreed by the court that the said deed of trust and mortgage of January 17, 1880, is a valid conveyance for the purposes therein mentioned, and that the same covers, embraces, and conveys all the said railroad, property, and franchises owned or acquired by the said Toledo, Delphos & Burlington Railroad Company at the date of the execution and delivery of
75 said deed of trust and mortgage, and all the railroad, property, and franchises owned or acquired by said Toledo, Delphos & Burlington Railroad Company or by its successor by consolida-

tion, the Toledo, Cincinnati and St. Louis Railroad Company, since the execution and delivery of said deed of trust and mortgage of January 17, 1880, embraced in the description in and conveyed by said deed of trust and mortgage as hereinabove set forth, and that the said deed of trust and mortgage is a first and paramount lien upon the entire line of railroad, property, rights, and franchises therein described and thereby conveyed, and is entitled to priority in the distribution of the proceeds of any sale of said property covered and conveyed thereby, to be made pursuant to this decree, over any other claim or lien against the same, except as hereinafter set forth and provided.

6th. Pursuant to the consent, order, and decree rendered and entered herein on the 5th day of Nov., 1885, by and between the complainants herein and Herbert Steward, defendant herein, it is ordered and decreed that the said Herbert Steward do forthwith deposit in the registry of this court all of the bonds of the
76 Frankfort, St. Louis & Toledo Railroad Company, including the bonds certified in by the trustee in said bonds and the uncertified and unissued bonds, and any and all books, papers, stock books, certificates of stock, memoranda, or entries of any and every kind pertaining to the said Frankfort, St. Louis and Toledo Railroad Company now in his possession or under his control, and that thereupon the said Herbert Steward be dismissed as defendant in this cause at the cost of complainants.

And it is further adjudged and decreed by the court that the averments of the amendment to the original bill of complaint herein as to said bonds and stock of said Frankfort, St. Louis & Toledo Railroad Company are true, and that the same became, by reason of the facts in said amendment averred, the property of the Toledo, Delphos & Burlington Railroad Company, and that, by reason of the facts in said amendment averred, the said first deed of trust and mortgage of the said Toledo, Delphos & Burlington Railroad Company of January 17, 1880, became and is a first and paramount lien on all of the said railroad and property as now constructed and existing between Warren and Kokomo, in the State of Indiana,
77 and that upon and after sale and conveyance under this decree the said Frankfort, St. Louis & Toledo Railroad Company bonds and stock shall be by the masters making such sale properly marked as cancelled, and that the same shall be and remain in the registry of this court after such cancellation.

7th. The court further finds that the said Toledo, Delphos & Burlington Railroad Company, proper corporate action for that purpose having first been had, did, on said 17th day of January, 1880, execute and deliver to the said complainant herein, The Central Trust Company of New York, as trustee, its certain other deed of trust or mortgage bearing date on that day, whereby it granted, bargained, sold, and conveyed to said trustee all the railroad, property, rights, franchises, goods, and chattels described or mentioned in the said first deed of trust and mortgage hereinabove mentioned, then owned or thereafter to be acquired, to secure the payment at maturity of the principal of one thousand two hundred

and fifty bonds of said company, known as "income bonds," each for $1,000, said bonds payable on the first day of January,
78 1910, and all such interest thereupon as might become due thereon according to the tenor and effect of said last-mentioned bonds and mortgage; that by said last-mentioned bonds and mortgage it was expressly agreed that the interest upon said last-mentioned bonds was not to be due or payable except out of net earnings of said railroad company applicable to such purpose as in said income mortgage provided.

The court further finds that the said one thousand two hundred and fifty bonds secured by said first deed of trust and mortgage made by said Toledo, Delphos & Burlington Railroad Company to the said Central Trust Company of New York, together with all the installments of interest thereon from and after the interest coupons falling due January 1, 1883, together with interest upon said defaulted coupons, remains wholly unpaid; and the court further finds that demand for the payment of said several installments of interest now in default was duly made at the date of the maturity of said interest coupons, and payment thereof was then and there refused; and the court further finds that prior to
79 the filing of the said original bill of The Central Trust Company of New York, complainant herein, the holders of more than one-half of said bonds had made demand in writing on said Central Trust Company of New York to proceed to the foreclosure of said mortgage. Wherefore the court finds that the principal of said bonds has become due and payable, and that the said first trust deed and mortgage be foreclosed and said railroad, property, rights, and franchises thereby covered and conveyed be sold, and that the proceeds arising from such sale be distributed as hereinafter provided.

8th. The court further finds and decrees that there is now due and owing for principal and interest upon said bonds and coupons secured by said first deed of trust and mortgage the sum of one million five hundred and twenty-four thousand and eighty-five dollars, and that said deed of trust and mortgage is a first and paramount lien on all the property therein described and thereby conveyed, subject only to such court and receiver's indebtedness as has been or may hereafter be adjudged and decreed as prior in equity and lien to the lien of said first trust deed and mortgage.

80 9th. It is therefore considered, adjudged, and decreed by the court that the defendants, the said Toledo, Delphos & Burlington Railroad Company and the said Toledo, Cincinnati & St. Louis Railroad Company, do pay to said complainant, The Central Trust Company of New York, the said amount hereinabove found to be due on the debt secured by said first trust deed and mortgage made to said Central Trust Company of New York on the 17th day of January, 1880, to wit, the sum of one million five hundred and twenty-four thousand and eighty-five dollars, together with interest thereon, at the rate of six per cent. per annum, from and after the date of this decree, together with the costs of this suit, taxed at —, within five days from and after the date of the entry of this decree,

and that in default of such payment by said defendants or either of them within said five days, then and in that case that said second or income mortgage bondholders do pay, within ten days from and after the date of this decree, the said amounts above found due on the debt secured by said first deed of trust and mortgage made to said Central Trust Company of New York on the 17th day of January, 1880, together with interest thereon, at the
80½ rate of six per cent. per annum, from and after the date of this decree, together with costs of this suit, taxed at —, and that in default of such payment by said defendants or either of them and by said income mortgage bondholders it is further ordered, adjudged, and decreed that the equity of redemption of said defendants herein in and to said mortgaged property be forever barred and foreclosed, and that all and singular the said railway and property covered and conveyed by said first trust deed and mortgage to said Central Trust Company of New York, including the rights of way thereof, the road-bed thereof, the superstructures of all sorts thereon, its water and other stations and shops, the lands and grounds connected therewith, the tools or implements owned or provided to be used thereon and therein and in constructing and repairs to cars and machinery for said road on the track and the superstructures aforesaid, and all fixtures and superstructures of whatever name or nature, and the lands and grounds connected therewith used or provided to be used in operating said
81 road, wherever situated, including all terminal facilities then or thereafter owned and provided to be used in the operation of said railroad and all cars, engines, and rolling stock belonging to said defendant companies or either of them, and all supplies and other things provided by the said companies defendant or either of them or by the receiver appointed under the order of this court to be used in operating said railroad, together with all corporate franchises of said defendant companies and of each and every of the original constituent companies entering into the various consolidations forming the said Toledo, Delphos and Burlington Railroad Company and its successor, the said Toledo, Cincinnati and St. Louis Railroad Company, including the rights and franchises of said several companies, be sold as hereinafter ordered and directed and as an entirety, the same being, in the opinion and judgment of this court, incapable of being sold separately or in divisions without material injury to the value thereof.

And it is further ordered and decreed that the said mortgaged property be sold without appraisement and without reference and not subject to the law or laws of the States of Indiana,
82 Illinois, and Ohio touching rights of redemption from mortgage sales.

10th. And the court further orders, adjudges, and decrees that all and singular the property and effects, rights, and franchises of the said Toledo, Delphos & Burlington Railroad Company and its successor, the Toledo, Cincinnati & St. Louis Railroad Company, and of the said original constituent companies, so ordered to be sold as aforesaid, shall be sold by William P. Fishback and John McMas-

ters, special masters in chancery now appointed by this court to make said sale, and a certified copy of this decree delivered to said masters shall be their authority for the making of said sale.

11th. It is further ordered, adjudged, and decreed by the court that the said masters in chancery, before offering said property, franchises, and premises for sale, shall advertise the time, place, and terms of such sale, together with a brief general description of such property, in one newspaper published in the city of New York, in the State of New York; one published in the city of Boston, Massachusetts; one published in the city of Toledo, in the State of
83 Ohio; one published in the city of Indianapolis, in the State of Indiana, and one published in the city of Springfield, in the State of Illinois, on-e each week for four consecutive weeks, the first insertion of which advertisement and notice shall not be less than thirty days before the day of such sale, and that such sale shall be made by public auction to the highest bidder at the door of the United States circuit court room, in the city of Indianapolis, in the county of Marion, in the State of Indiana; and the said masters in chancery are hereby ordered and directed to require a deposit of thirty-five thousand dollars ($35,000) to be made by each and every bidder or bidders before receiving any bid from such bidder or bidders, which deposit shall be absolutely forfeited to the use of the trusts in the hands of the said complainant, The Central Trust Company of New York, if the bidder to whom the property shall be struck off shall fail to pay or complete the said purchase, in accordance with the terms of said sale and the orders and decrees of this court.

It is further ordered, adjudged, and decreed that in making such sale the said masters shall not receive or cry any bid for a sum less than six hundred thousand dollars ($600,000).

84 12th. It is further ordered, adjudged, and decreed by the court that within twenty days from and after the confirmation of such sale made under this decree the purchaser or purchasers shall pay of the unpaid purchase-money for which said property is sold a sum sufficient, taken together with the said thirty-five thousand dollars paid at the time of such sale, to pay and discharge the court costs, the masters' fees, solicitors' fees, counsel fees, and the claims and debts, including taxes legally due upon said property, that shall have been then and prior thereto found and determined and finally adjudged and decreed to be due and payable as court and receiver's indebtedness and to be prior and superior in equity to the lien of the said first deed of trust and mortgage, excepting such final decrees upon said claims and debts or any or either of them as may have then been superseded by proper appeal and supersedeas bond, and upon such payment by such purchaser or purchasers the said purchaser or purchasers shall be let into the possession, use, and enjoyment of the said railroad and property purchased at said sale, subject to the conditions and stipulations hereinafter set forth and provided.

85 13th. Upon confirmation of sale made under this decree, and upon payment within twenty days thereafter of such

part of the purchase-money as may be required to fully comply with the provisions and requirements of the above 12th section of this decree, the masters shall make, execute, and deliver to such purchaser or purchasers a good and sufficient deed of conveyance, conveying to such purchaser or purchasers all and singular the railroad, property, rights, franchises, and effects covered and conveyed by said first deed of trust and mortgage by proper and apt description. The deed so executed and delivered by the masters shall contain an express stipulation reserving to the court, and the court does hereby reserve, full power and jurisdiction over said property, with full authority and power, upon default of the purchaser or purchasers in complying with each and every of the requirements of this decree respecting payment of the purchase-money, to retake possession of said railroad and property and forthwith sell the same or any part thereof upon order of the court to that effect entered. Said deed shall contain the further stipulation that the purchaser or purchasers, his or their assigns, will forthwith yield possession of said railroad and property upon such order of the
86 court entered upon such default of the purchaser or purchasers in the payment of purchase-money as by the order of court required. Upon the delivery of said deed by the masters to such purchaser or purchasers the receiver of this court and all persons acting by or under his authority shall deliver and surrender possession to said purchaser or purchasers, on the production of said masters' deed or other evidence of the execution and delivery thereof, all of said railroad and property in his or their possession and under his or their control, and shall also surrender and deliver up to such purchaser or purchasers all books of account and records and papers in any manner pertaining to the said Toledo, Delphos & Burlington Railroad Company and its successor, the Toledo, Cincinnati & St. Louis Railroad Company, or pertaining to any or either of the constituent companies entering into the consolidations resulting in said Toledo, Delphos & Burlington Railroad Company and its successor, the said Toledo, Cincinnati & St. Louis Railroad Company, together with all choses in action, claims, property, and effects of every nature in the possession and under the control of said receiver.

14th. The residue of the purchase-money not required to
87 make the payments required by and provided for in the above twelfth section of this decree shall be paid by the purchaser or purchasers from time to time upon the amounts found and determined and finally adjudged and decreed by the court to be due and payable upon court and receiver's indebtedness and to be prior and superior to the lien of said first deed of trust and mortgage, said payments to be made by the purchaser or purchasers upon twenty days' notice by the masters, upon the order of the court to that effect entered requiring such payment, until the entire purchase-money is exhausted, if it requires the entire purchase-money to pay and discharge said court and receiver's indebtedness. If any surplus is left after full payment of the court and receiver's indebtedness, as hereinabove provided, the same shall be distributed *pro rata* upon the coupons and bonds of said first mortgage or deed

or trust until the same are fully paid. If any surplus remains after such full payment of the defaulted coupons and bonds secured by said first mortgage or deed of trust, such surplus so remaining shall be distributed *pro rata* upon the income bonds and coupons. In making payment of any surplus of said purchase-money left after full payment of the court and re-
88 ceiver's indebtedness the purchaser or purchasers shall be allowed to pay said surplus in the bonds and coupons to which the same may be applicable, as hereinabove provided, each such coupon and bond being received by the masters for such sum as the holder thereof is entitled to receive under the distribution herein provided and according to the priorities herein adjudged. In making payment of any order and decree decreeing any specific sum to be due and payable upon any claim or debt adjudged and decreed due and payable as a part of the court and receiver's indebtedness against said property the purchaser or purchasers shall have the right to pay and discharge said decree by furnishing to the masters the evidence that such purchaser or purchasers is the owner of the claim or debt so decreed to be due and payable and has authority to enter the same satisfied and discharged; and, to the end that all just claims against said property may be speedily determined and adjudged, it is now ordered by the court that all persons, firms, and corporations having or asserting any claim or claims against said property accrued while said property has remained in the possession of the court whose claim or claims have
89 not already been filed and presented shall, within sixty days from and after the date of this decree, file and present to the circuit court of the United States for the district of Indiana such claim or claims, showing upon the face thereof when, where, and for what such claim or claims accrued; and the masters in publishing the advertisement and notice of sale of said property, as hereinbefore required, shall in such notice make due and proper mention of this order, which shall be all the notice thereof required to be given, and all persons, firms, and corporations not having presented and filed their claims within said sixty days, as herein provided, shall be, and they are hereby, forever barred and foreclosed.

This order shall not apply to operatives and employees rendering or having rendered services to the receiver appointed by this court whose names and services appear upon the pay-rolls of said receiver.

15th. The distribution of the proceeds of the sale of the said railroad and property under this decree shall be as follows:

1. To court costs, masters' fees, solicitors' fees, and counsel fees as the same may hereafter be determine and adjudge- by the court and the court and receiver's indebtedness.

90 2. *Pro rata* distribution upon the coupons and bonds secured by the said first deed of trust and mortgage by this decree foreclosed.

3. *Pro rata* distribution upon the income bonds and coupons hereinbefore mentioned.

16th. The complainants herein and the purchaser or purchasers

at the foreclosure sale under this decree reserve the right to appeal from any orders and final decrees made by the court directing and decreeing the payment of claims and debts found and determined and adjudged and decreed to be due and payable as court and receiver's indebtedness and to be prior and superior in equity to the lien of said first deed of trust and mortgage herein and hereby foreclosed, if they shall be so advised.

17th. It is further ordered by the court that the clerk of this court do forthwith deliver to the United States circuit court for the northern district of Ohio, western division, a certified copy of this decree.

W. Q. GRESHAM.

And it is further ordered that any or either of the parties to this cause may apply to the court for such other and further directions at the foot of this decree as may be necessary to carry it into effect according to its true intent and meaning. It is hereby stipulated that the testimony heretofore taken and filed in this cause under the reference to A. J. Ricks, special master, may be used in any future litigation touching Toledo terminal property with the same effect as though originally taken therein, each party to such
91 future litigation reserving the right to take additional testimony if so advised, and the purchaser at foreclosure sale shall take, subject to this provision, and shall be deemed to have assented thereto.

And afterwards, to wit, at the November term of said court, on the 30th day of December, 1885, before the Honorable Walter Q. Gresham and Honorable William A. Woods, judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now William P. Fishback and John McNulta, the special masters appointed herein and charged with the duty of making the sale, and file their report of sale herein in the words following, to wit:

92 To the honorable court:

The undersigned, Wm. P. Fishback and John McNulta, the special masters appointed herein and charged with the duty of making the sale herein, according to the directions of the several orders and decrees made in the above-entitled cause in the circuit court of the United States for the district of Indiana and the northern district of Ohio, western division, respectfully report to the court as follows:

Pursuant to said orders and decrees, notice of the time, place, and terms of sale was given by publication of said notice as follows:

In the Daily New York Evening Post, a daily newspaper of general circulation printed and published in the city of New York, State of New York, on the days following, viz: Nov. 28th, Dec. 5th, 12th, 19th, and 26th, A. D. 1885.

In the Daily Springfield, Illinois, Journal, a daily news-
93 paper of general circulation printed and published in the city

of Springfield, State of Illinois, on the days following, viz: Nov. 28th, Dec. 5th, 12th, 19th, and 26th, A. D. 1885.

In the Daily Indianapolis Journal, a daily newspaper of general circulation printed and published in the city of Indianapolis, State of Indiana, on the days following, viz: Nov. 28th, Dec. 5th, 12th, 19th, and 26th, A. D. 1885.

In the Daily Boston Journal, a daily newspaper of general circulation printed and published in the city of Boston, State of Massachusetts, on the days following, viz: Nov. 28th, Dec. 5th, 12th, 19th, and 26th, A. D. 1885.

In the Daily Toledo Blade, a daily newspaper of general circulation printed and published in the city of Toledo, State of Ohio, on the days following, viz: Nov. 28th, Dec. 5th, 12th, 19th, and 26th, A. D. 1885.

The publication of this said notice in each and all of said newspapers began at least thirty days prior to the time of sale, and
94 said notice was to the effect that said sale would take place at the door of the United States circuit court room on Wednesday, the 30th day of December, A. D. 1885, at 12 o'clock m. of said day.

Copies of said notice as published in said newspapers, accompanied by affidavits showing the publication thereof, are filed herewith and made part of this report.

After having given said notice in the manner aforesaid, and pursuant thereto, and in obedience to the several decrees and orders of said courts in that behalf, the undersigned, special masters, attended in person at the said city of Indianapolis, county of Marion, State of Indiana, and at the door of the United States circuit court room for the district of Indiana, upon the day appointed and at the hour named in said notice of sale, and, in the presence of a
95 number of persons attending said sale and having the opportunity to bid thereat, did then and there at public outcry openly offer and expose to sale, upon the terms and provisions of said decrees and orders of said courts and said notice of sale, as an entirety all and singular the entire railroad of the Toledo, Delphos and Burlington Railroad Company and the Toledo, Cincinnati and St. Louis Railroad Company extending from the city of Kokomo, in the State of Indiana, to the city of Toledo, in the State of Ohio, with all its franchises, rights, and privileges as described in the printed paper which was read by the special masters at the time and in the hearing of the persons so assembled, to wit:

Masters' Sale of the Toledo, Cincinnati & St. Louis Railroad from Toledo, Ohio, to Kokomo, Indiana, Commonly Known as the Toledo Division.

96 In obedience to an order of sale issued out of the circuit court of the United States for the district of Indiana upon a decree rendered in a cause wherein The Central Trust Company of New York, James M. Quigley, Charles T. Harbeck, and John McNab were complainants and The Toledo, Delphos & Burlington Railroad Company of Ohio and Indiana and The Toledo, Cincinnati & St.

Louis Railroad Company of Ohio, Indiana, and Illinois and others were defendants, and a like decree rendered by the circuit court of the United States for the northern district of Ohio, western division, in an ancillary cause wherein the same complainants were complainants and the same defendants were defendants, in each of which a decree of foreclosure has been entered in said courts upon certain mortgages and trust deeds executed by the Toledo, Delphos & Burlington Railroad Company to the Central Trust Company of New York on the 17th day of January, 1880, the un-
97 dersigned, special masters appointed by the said courts, will offer for sale at public auction to the highest bidder, at the door of the United States circuit court room, in the city of Indianapolis, in the county of Marion and State of Indiana, on Wednesday, the 30th day of December, A. D. 1885, at 12 o'clock noon of said day, all the following-described property, namely:

All and singular the line of railroad of the said Toledo, Delphos & Burlington Railroad Company between Toledo, Lucas county, Ohio, through the counties of Lucas, Wood, Henry, Putnam, Allen, and Van Wert, in the State of Ohio, and the counties of Adams, Wells, Huntington, Wabash, Miami, Grant, and Howard, in the State of Indiana, to the city of Kokomo, Indiana, being about one hundred and eighty miles in length, together with all and singular the right of way, road-bed, and track between the terminal points aforesaid, together with all the stations, depot grounds, rails,
98 fences, bridges, sidings, engine-houses, machine shops, buildings, and erections in any way appertaining unto said railroad, together with all engines, cars, machinery, supplies, tools, and fixtures held, owned, or acquired by the said railroad company for use in connection with its line of railroad aforesaid, and all depot grounds, yards, sidings, turnouts, sheds, machine shops, leasehold rights, and other terminal facilities owned by said railroad company, together with all and singular the powers and franchises belonging thereto, and the tolls, income, and revenue to be levied by and derived therefrom, being all and singular the railway property covered and conveyed by certain mortgages and deeds of trust executed and delivered by the Toledo, Delphos & Burlington Railroad Company on the 17th day of January, A. D. 1880, to the Central Trust Company of New York to secure certain bonds and interest
99 warrants or coupons described in said deeds of trust and mortgages, including the rights of way thereof, the road-bed thereof, the superstructures of all sorts thereon, its water and other stations and shops, the lands and grounds connected therewith, and tools or implements owned or provided to be used thereon and therein and in constructing and repairs to cars and machinery of said road or the track and the superstructures aforesaid, and all fixtures and superstructures of whatever name or nature, and the lands and grounds connected therewith used or provided to be used in operating said road wherever situated, including all terminal facilities owned by the said Toledo, Delphos & Burlington Railroad Company at the date of the execution of the said trust deeds and mortgages to said Central Trust Company of New York, or thereafter owned by the

said Toledo, Delphos & Burlington Railroad Company and by
100 its successor by consolidation, the Toledo, Cincinnati & St. Louis Railroad Company, and provided to be used in the operation of said railroad, and all cars, engines, and rolling stock belonging to the said Toledo, Delphos & Burlington Railroad Company and the Toledo, Cincinnati & St. Louis Railroad Company or either of them, and all supplies and other things provided by the said railroad companies last named or either of them or by the receivers appointed by the order of this court to be used in operating said railroad, together with all corporate franchises of said railroad companies last named and of each and every of the original constituent companies entering into the various consolidations forming the said Toledo, Delphos & Burlington Railroad Company and its successor, the said Toledo, Cincinnati & St. Louis Railroad Company, including the rights and franchises of said several companies.

101 All of said railroad property, with its appurtenances, to be sold as an entirety without appraisement and without reference and not subject to the law or laws of the States of Indiana, Illinois, and Ohio touching rights of redemption from mortgage sales.

Any person desiring to bid at such sale will be required to make a deposit of thirty-five thousand dollars ($35,000) with the undersigned before any bid will be received, which deposit shall be absolutely forfeited to the use of the trusts in the hands of the Central Trust Company of New York under said trust deeds and mortgages if the bidder to whom the property shall be struck off shall fail to pay or complete the said purchase in accordance with the terms of said sale and the orders and decrees of the said United States circuit court for the district of Indiana.

The undersigned will not receive or cry any bid for a sum less than six hundred thousand dollars ($600,000).

102 Within twenty days after the confirmation of such sale the purchaser or purchasers shall pay of the unpaid purchase-money for which said property is sold a sum sufficient, taken together with the said thirty-five thousand dollars ($35,000) paid at the time of such sale, to pay and discharge the court costs, the masters' fees, solicitors' fees, counsel fees, and the claims and debts, including taxes legally due upon said property, that shall have been then and prior thereto found and determined and finally adjudged and decreed to be due and payable as court and receivers' indebtedness and to be prior and superior in equity to the lien of the said deeds of trust and mortgages, excepting such final decrees upon said claims and debts or any or either of them as may then have been superseded by proper appeal and supersedeas bond; and upon such payment by such purchaser or purchasers the said purchaser or purchasers shall be let into the possession, use, and
103 enjoyment of said railroad and property purchased at said sale, subject to the conditions following, viz:

After the confirmation of said sale and payments as above provided a deed of conveyance will be made to the purchaser or purchasers, conveying the railroad property purchased at such sale,

which deed shall contain a stipulation reserving to the said United States circuit court for the district of Indiana full power and jurisdiction over said property, with full authority and power, upon default of the purchaser or purchasers in complying with each and every of the requirements of the said decree respecting payment of the purchase-money, to retake possession of said railroad and property and forthwith sell the same or any part thereof upon order of the said court to that effect entered.

Said deed will contain the further stipulation that the purchaser or purchasers, his or their assigns, will forthwith yield pos-
104 session of said railroad and property upon such order of the court entered upon such default of the purchaser or purchasers in the payment of purchase-money, as by the order of court required.

The residue of the purchase-money not required to make the payments provided for above shall be paid by the purchaser or purchasers from time to time upon the amounts found and determined and finally adjudged and decreed by the court to be due and payable upon court and receivers' indebtedness and to be prior and superior to the lien of said first deed of trust and mortgage executed Jan. 17, A. D. 1880; said payment to be made by the purchaser or purchasers upon twenty days' notice by the master, upon the order of the court to that effect entered, requiring such payment, until the entire purchase-money is exhausted, if it requires the entire purchase-money to pay and discharge said court and receivers'
105 indebtedness. If any surplus is left after full payment of the court and receivers' indebtedness, as hereinbefore provided, the same shall be distributed *pro rata* upon the coupons and bonds of said first mortgage or deed of trust until the same are fully paid. If any surplus remains after such full payment of the defaulted coupons and the bonds secured by said first mortgage or deed of trust, such surplus so remaining shall be distributed *pro rata* upon the income bonds and coupons. In making payment of any surplus of said purchase-money left after full payment of the court and receivers' indebtedness the purchaser or purchasers shall be allowed to pay said surplus in the bonds and coupons to which the same may be applicable, as hereinbefore provided, each such coupon and bond being received by the masters for such sum as the holder thereof is entitled to receive under the distribution herein provided and according to the priorities
106 adjudged by said court. In making payment of any order and decree decreeing any specific sum to be due and payable upon any claim or debt adjudged and decreed due and payable as a part of the court and receivers' indebtedness against said property, the purchaser or purchasers shall have the right to pay and discharge said decree by furnishing to the master the evidence that such purchaser or purchasers are the owners of the claim or debt so decreed to be due and payable and has authority to enter the same satisfied and discharged.

And to the end that all just claims against said property may be speedily determined and adjudged, notice is hereby given that

all persons, firms, and corporations having or asserting any claim or claims against said property, accrued while said property has remained in the possession of the court, whose
107 claim or claims have not already been filed or presented, shall, within sixty days from and after the 12th day of November, A. D. 1885, file and present to the circuit court of the United States for the district of Indiana such claim or claims, showing upon the face thereof when, where, and for what such claims accrued; and all persons, firms, and corporations not having presented and filed their claims within said sixty days shall be forever barred and foreclosed:

Provided that operatives and employés having claims for services rendered to the receivers appointed by this court, whose names and services appear upon the pay-rolls of said receivers, shall not be required to present their claims under this notice.

W. P. FISHBACK,
JOHN McNULTA,
Special Masters.

BUTLER, STILLMAN & HUBBARD,
HOADLY, JOHNSON & COLSTON,
BAKER, HORD & HENDRICKS,
McDONALD, BUTLER & MASON, *Solicitors.*

108 And thereupon Sylvester H. Kneeland did bid for said property the sum of six hundred thousand dollars ($600,000).

Before said bid was considered or received said bidders placed on deposit with said special masters the sum of thirty-five thousand dollars in cash as a pledge that the bid so made would be made good in case of acceptance, which sum was then and there paid into court by delivering the same to Noble C. Butler, Esq., clerk of the United States circuit court for the district of Indiana.

And no one bidding more and that being the highest and best bid, and more than the minimum price fixed by the orders of said court for the sale of said property, it was thereupon then and there, at the hour of twelve o'clock and 30 minutes of said day,
109 openly and publicly struck off and sold to the said Sylvester H. Kneeland for the sum of six hundred thousand dollars.

And said special masters submit their doings herein for the consideration and further order of the court.

December 30th, 1885.

Respectfully submitted.

WILLIAM P. FISHBACK,
JOHN McNULTA,
Special Masters.

110 And afterwards, to wit, at the Novemner term of said court, on the 5th day of February, 1886, before the Honorable Walter Q. Gresham and the Honorable William A. Woods, judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the complainants, by their solicitors, and the purchaser

of said railroad and property, by his solicitors, and show to the court that heretofore, to wit, on November 12th, 1885, final decree of foreclosure and sale was rendered and entered by this court in this cause; that by said decree William P. Fishback and John McNulta were appointed special masters to sell said railroad and property in accordance with the terms, conditions, and notices prescribed and provided in said decree; that afterwards, to wit, on the 30th day of December, A. D. 1885, the said masters, William P. Fishback and John McNulta, did sell said railroad and property in obedience to and performance of the directions and condi*di*tions of the said decree, and filed in this court their written report of such sale and their proceedings as such special masters under said decree; which said report is on file and of record in this cause in this court, to which reference is hereby made, and that more than thirty days have elapsed since the filing of said report of sale, and no exceptions have been filed thereto in said cause.

And thereupon, upon motion, it is now ordered, adjudged, and decreed by the court that the said sale of said railroad and property in said decree, notice of sale, and report of said sale mentioned and described be, and the same is hereby, in all things approved and confirmed by the court.

It is further ordered, adjudged, and decreed that upon the performance by the purchaser at said sale of the terms and conditions in that behalf in said decree provided he shall be entitled
111 to have and receive a good and sufficient deed of conveyance conveying to him said railroad and property by the exact description in said final decree and notice of sale contained and set forth.

And it is further ordered, adjudged, and decreed that the Central Trust Company of New York and the Toledo, Cincinnati and St. Louis Railroad Company be, and they are hereby, required to join in the conveyance of said railroad and property whenever the said deed shall be ordered, executed, and delivered by the further order of this court; and this cause is continued for further proceedings in accordance with the terms and stipulations of said final decree.

And afterwards, to wit, at the November term, 1885, of said court, on the 10th day of March, 1886, before the Honorable William A. Woods, one of the judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

Now, on this day, come the special masters, William P. Fishback and John McNulta, appointed herein, and present to the court a certain deed, a copy of which is hereto annexed (and the same shall be spread of record in connection with this order and decree), made by them in accordance with the decree entered in the above-entitled cause, in and by which they, the said masters, convey all the property and franchises which were of the Toledo, Delphos and Burlington Railroad Company and of the St. Louis Division of the Toledo, Cincinnati and St. Louis Railroad Company to Sylvester H. Kneeland, the purchaser thereof, and ask that the said deed be by the court affirmed.

And the court, being fully advised in the premises, does hereby confirm the said deed and the acts of the said masters in that behalf, and the said masters are hereby ordered to deliver the said deed to the said Sylvester H. Kneeland.

112 And it is further ordered that said deed is confirmed and delivered with the express understanding that the court shall have and retain full power and authority to retake possession of said property or any part thereof if the said grantee shall fail to pay the full purchase-money according to the terms of the decrees of sale; and that in case any appeal is taken from any decree for the payment of money by said grantee and supersedeas bond be given, the amount secured by such bond shall be considered as a part of the purchase-money, to enforce the payment of which the court may retake said property or any part thereof.

It is further ordered that the Central Trust Company of New York and the Toledo, Cincinnati and St. Louis Railroad Company of Ohio, Indiana, and Illinois, parties hereto, make, execute, and deliver to said Sylvester H. Kneeland a deed to all of said property and franchises embraced in the mortgages foreclosed in the above causes, in accordance with the decrees heretofore made in that behalf.

And it is further ordered that the said John McNulta, receiver herein, deliver immediate possession to said Sylvester H. Kneeland or to his agent, James M. Quigley, of all of the said property mentioned in the said deed, and that the said receiver without delay proceed to pay the supply and labor claims now due under his administration and turn over to the clerk of this court any money that may then be in his hands, together with the certificate of stock of the Frankfort and State Line Railroad Company, amounting to the sum of $1,800,000, par value; and, further, that he make, as soon as practicable, his final report as such receiver; and that, subject to the further order of this court, the said receiver turn over to the clerk of the U. S. court at Toledo, Ohio, all books, papers, and vouchers

113 that may be in his possession or control relating in any way to the receivership herein, including those received from his predecessor.

It is further ordered that the clerk of this court do forthwith send to the clerks of the circuit courts of the United States for the northern district of Ohio, western division, and the southern district of Illinois certified copies of this order and decree with copies of deed attached.

Masters' Deed.

Toledo, Cincinnati & St. Louis R. R., William P. Fishback and John McNulta, special masters,
to
Sylvester H. Kneeland.

This deed of conveyance, made this tenth day of March, A. D. 1886, by William P. Fishback and John McNulta, special masters of the circuit court of the United States for the district of Indiana, the southern district of Illinois, and the northern district of Ohio,

western division, grantors, to Sylvester H. Kneeland, grantee, witnesseth:

That heretofore, in June, 1884, there were filed in the circuit court of the United States for the district of Indiana and the southern district of Illinois respectively bills of complaint in chancery, wherein The Central Trust Company of New York, Edward F. Leonard, James M. Quigley, and others were complainants and The Toledo, Cincinnati and St. Louis Railroad Company of Ohio, Indiana, and Illinois and others were defendants, and that heretofore, in October, 1883, there were filed in the circuit court of the United States for the district of Indiana and the northern district of Ohio, western division, bills of complaint in chancery, wherein The Cen-
114 tral Trust Company of New York, James M. Quigley, and others were plaintiffs and The Toledo, Delphos and Burlington Railroad Company, The Toledo, Cincinnati and St. Louis Railroad Company, and others were made defendants, the object and prayer of which said bills of complaint so filed in the United States circuit court for the district of Indiana and the southern district of Illinois was the foreclosure of certain mortgages and trust deed executed by the said Toledo, Cincinnati and St. Louis Railroad Company to the Central Trust Company of New York and Thomas A. Hendricks, trustees, and the object and prayer of which said bills of complaint so filed in the circuit court of the United States for the district of Indiana and the northern district of Ohio, western division, was the foreclosure of certain mortgages and trust deeds executed by the said The Toledo, Delphos and Burlington Railroad Company to the Central Trust Company of New York, trustee.

Whereas such proceedings were had in said causes that afterwards, on the 12th day of November, 1885, said causes so pending in the circuit court of the United States for the district of Indiana coming on to be heard, having been set down for hearing upon the bills of complaint filed in said causes and the several answers thereto and other pleadings filed in said causes and the exhibits and testimony, upon which the court, being fully advised, did find the equity of the causes in favor of the said complainants named in the bills of complaint mentioned, and, among other things, did then and there order, adjudge, and decree that the premises, real and personal, property, rights, and franchises named in said decree, to wit:

All and singular the line of railroad between a connection with the Toledo, Delphos and Burlington railroad in the city of Kokomo, Howard county, in the State of Indiana, and extending thence through the counties of Howard, Clinton, Tippecanoe, Montgomery,
115 Fountain, Parke, and Vermillion, in the State of Indiana, and Vermillion, Edgar, Douglas, Coles, Cumberland, Shelby, Fayette, Bond, Madison, Montgomery, and St. Clair, in the State of Illinois, to the city of East St. Louis, in St. Clair county, Illinois, being about two hundred and seventy miles in length, together with all and singular the rights of way, road-bed, and track laid between the terminal points aforesaid, together with all the stations, depot grounds, rails, fences, bridges, sidings, engine-houses, ma-

chine shops, buildings, and erections in any way appertaining unto said line of described railroad between said points, together with all machinery, supplies, tools, and fixtures owned by the said Toledo, Cincinnati and St. Louis Railroad Company for use in connection with the line of railroad aforesaid between said points, and all the depot grounds, yards, sidings, turnouts, sheds, machine shops, and leasehold rights in connection with said line of railroad between said points, together with all and singular the powers and franchises thereto belonging, and the tolls, income, and revenue to be received or derived therefrom, being the property described in the mortgage and trust deeds executed by the Toledo, Cincinnati and St. Louis Railroad Company to the Central Trust Company of New York and Thomas A. Hendricks, trustees, and commonly known as the St. Louis Division of the Toledo, Cincinnati and St. Louis railroad, and also the following property, viz:

All and singular the line of railroad of the said Toledo, Delphos and Burlington Railroad Company from Toledo, Lucas county, Ohio, through the counties of Lucas, Wood, Henry, Putnam, Allen, and Van Wert, in the State of Ohio, and the counties of Adams, Wells, Huntington, Wabash, Miami, Grant and Howard, in the State of Indiana, to the city of
116 Kokomo, Indiana, being about one hundred and eighty miles in length, together with all and singular the right of way, road-bed, and track between the terminal points aforesaid, together with all the stations, depot grounds, rails, fences, bridges, sidings, engine-houses, buildings, machine shops, and erections in any way appertaining unto said railroad, together with all engines, cars, machinery, supplies, tools, and fixtures held, owned, or acquired by the said railroad company for use in connection with the line of railroad aforesaid, and all depot grounds, yards, sidings, turnouts, sheds, machine shops, leasehold rights, and other terminal facilities owned by said railroad company, together with all and singular the powers and franchises belonging thereto, and the tolls, income, and revenue to be levied by and derived therefrom, being all and singular the railway property covered and conveyed by certain mortgages and deeds of trust executed and delivered by the Toledo, Delphos and Burlington Railroad Company on the 17th day of January, A. D. 1880, to the Central Trust Company of New York to secure certain bonds and interest warrants or coupons described in said deeds of trust and mortgages, including the rights of way thereof, the road-bed thereof, the superstructures of all sorts thereon, its water and other stations and shops, the lands and grounds connected therewith, the tools or equipments owned or provided to be used thereon and therein and in constructing and repairs to cars and machinery of said road or the track and the superstructures aforesaid, and all fixtures and superstructures of whatever name or nature, and the lands and grounds connected therewith used or provided to be used in operating said road, wherever situated, including all terminal facilities owned by the said Toledo, Delphos and Burlington Railroad Company at the date of the execution of
117 the said trust deeds and mortgages to said Central Trust

Company of New York or thereafter owned or acquired by said Toledo, Delphos and Burlington Railroad Company or by its successor by consolidation, the Toledo, Cincinnati and St. Louis Railroad Company, and provided to be used in the operation of said railroad, and all cars, engines, and rolling stock belonging to said Toledo, Delphos and Burlington Railroad Company or the Toledo, Cincinnati and St. Louis Railroad Company or either of them, and all supplies and other things provided by the said railroad companies last named or either of them or by the receivers appointed by the order of this court to be used in operating said railroad, together with all corporate franchises of said railroad companies last named and each and every of the original constituent companies entering into the various consolidations forming the said Toledo, Delphos and Burlington Railroad Company and its successor, the said Toledo, Cincinnati and St. Louis Railroad Company, including the rights and franchises of said several companies, being the property and premises described in the mortgages and deeds of trust executed by the said Toledo, Delphos and Burlington Railroad Company to the Central Trust Company of New York, trustee, including the property thereafter acquired, in accordance with the terms of said mortgages and trust deeds, and being commonly known as the Toledo Division of the Toledo, Cincinnati and St. Louis railroad, should be sold at public auction as an entirety by the special masters above named at the door of the United States circuit court room, in the city of Indianapolis, Marion county, Indiana;

And whereas said decree did further provide that before making said sale of the premises and property hereinbefore first above described, namely, the property covered by the mortgages and deeds of trust to the Central Trust Company of New York and
118 Thomas A. Hendricks, trustee-, commonly known as the St. Louis Division of the Toledo, Cincinnati & St. Louis railroad, said special masters should give previous notice of the time, place, and terms thereof by advertisement in one newspaper published in the city of New York, State of New York; one in the city of Boston, Massachusetts; one in the city of Indianapolis, Indiana, and one in the city of Springfield, Illinois, once each week for four consecutive weeks, the first of which publications was to be not less than thirty days before the day of sale, which decree further provides that said property should be sold at public auction to the highest bidder as an entirety, without relief from valuation or appraisement laws and free from all right of redemption, for the sum of not less than nine hundred thousand dollars;

And whereas by the decree in said cause wherein The Central Trust Company of New York and others were complainants and The Toledo, Delphos and Burlington Railroad Company of Ohio and Indiana and The Toledo, Cincinnati and St. Louis Railroad Company of Ohio, Indiana, and Illinois and others were defendants it was ordered, adjudged, and decreed that the railroad premises and property herein described covered by the mortgages and trust deeds executed by the Toledo, Delphos and Burlington Railroad Company to the Central Trust Company of New York, being known as the

Toledo Division of said Toledo, Cincinnati & St. Louis railroad, should be sold at public auction as an entirety by said special masters without appraisement, without reference, and not subject to the law or laws of the States of Indiana, Illinois, and Ohio touching rights of redemption from mortgage sales; which said decree further provided that the said special masters before offering said property, franchises, and premises for sale should advertise the time,
119 place, and terms of such sale, together with a general description of such property, in one newspaper published in the city of New York, in the State of New York; one published in the city of Boston, Massachusetts; one published in the city of Toledo, in the State of Ohio; one published in the city of Indianapolis, in the State of Indiana, and one published in the city of Springfield, in the State of Illinois, once each week for four consecutive weeks, the first insertion of which advertisement and notice was to be not less than thirty days before the day of sale;

And whereas it appeared to said court that concurrent proceedings for the foreclosure of said mortgages and trust deeds executed by the said Toledo, Cincinnati & St. Louis Railroad Company to the Central Trust Company of New York and Thomas A. Hendricks, trustees, were pending in the southern district of Illinois, and that like concurrent proceedings for the foreclosure of said mortgages and trust deeds executed by the Toledo, Delphos & Burlington Railroad Company to the Central Trust Company of New York, trustee, were pending in the circuit court of the United States for the northern district of Ohio, western division, in which said proceedings respectively ancillary or concurrent decrees had been entered confirming the appointment of said William P. Fishback and John McNulta special masters to make said sales in accordance with the terms of the decrees so entered in said causes in the circuit court of the United States for the district of Indiana;

And whereas afterwards, in conformity with the said several decrees, upon the præcipes of the solicitors for the said Central Trust Company of New York and Thomas A. Hendricks, trustees, as provided in each of said decrees, certified copies of said decrees
120 and orders of sale did issue under the seals of said courts respectively and directed to the said special masters, as by said decrees required, commanding the execution of the decrees aforesaid, under which orders of sale said special masters gave notice by publication, as required by said decrees, that they would on Wednesday, December 30th, 1885, at the door of the United States circuit court room, in the city of Indianapolis, Marion county, Indiana, at 12 o'clock noon of said day, offer for sale at public auction to the highest bidder conforming to the conditions of said decree the premises, real and personal property, rights, and franchises so ordered to be sold according to the directions and terms and subject to the conditions prescribed by said decrees;

And whereas on said day, at said time, in pursuance of said notices given by said publications as required by said decrees, said special masters offered said premises and real and personal property, rights, and franchises for sale at public auction to the highest bid-

der as aforesaid, and thereupon Sylvester H. Kneeland, having complied with and conformed to all the conditions, provisions, and requirements of said decrees for the sale of the property hereinbefore described and designated as the Toledo Division of said Toledo, Cincinnati & St. Louis Railroad Company, did offer and bid the sum of six hundred thousand dollars, the same being the minimum sum required by said decree, and, he being the highest and best bidder therefor and no person offering to bid any larger sum, the said special masters thereupon struck off and sold the same to the said Sylvester H. Kneeland;

And whereas on the same day, at the same time, in pursuance of said notice given by said publication as required by said decree, the said special masters offered said premises and all real and
121 personal property, rights, and franchises for sale at public auction to the highest bidder as aforesaid, namely, the railroad property hereinbefore described and designated as the St. Louis Division of said Toledo, Cincinnati & St. Louis railroad, and thereupon the said Sylvester H. Kneeland, having complied with and conformed to all the conditions, provisions, and requirements of said decree to enable him to bid for the same, did offer and bid for said property the sum of nine hundred and one thousand dollars, the same being more than the minimum sum required by said decree, and, he being the highest and best bidder therefor, the said special masters thereupon struck off and sold the same to the said Sylvester H. Kneeland;

And thereupon said special masters filed their report of sale of said Toledo Division in the said circuit court of the United States for the district of Indiana and the circuit court of the United States for the northern district of Ohio, western division, respectively, and did also file their report of said sale of said railroad property known as the St. Louis Division in said circuit court of the United States for the district of Indiana, all of which said reports of sale show that said notices had been duly given and said sales made as aforesaid; and by said reports it further appeared that said bidder, before making said bids and in conformity with the terms of said decrees, had deposited with said special masters the sums of money to be deposited by the terms of said decrees;

And whereas afterward, in the said circuit court of the United States for the district of Indiana, there were respectively entered decrees in said causes approving said reports therein respectively filed and confirming all the proceedings of said special masters in making said sales and confirming the sales of said premises,
122 and thereupon the clerk of said circuit court of the United States for the district of Indiana sent certified copies of said decree of confirmation to the clerk of the United States circuit court for the southern district of Illinois and the northern district of Ohio, western division, respectively;

And whereas afterwards it was ordered and decreed by the said circuit court of the United States for the district of Indiana that the said special masters should execute and deliver to said Sylvester H. Kneeland their deed of conveyance in proper form, to be

approved by said circuit court of the United States for the district of Indiana, conveying to said Sylvester H. Kneeland in fee simple all and singular the said premises, real and personal property, rights, and franchises so sold to him as aforesaid;

And whereas said purchaser, Sylvester H. Kneeland, has complied with the terms of the orders of said court in that behalf by paying and securing the payment of the purchase-money and has in all respects complied with the terms of sale as set forth in said decrees and in said notices of publication, all of which will more fully and at large appear, reference being had to the records of the proceedings in said causes in said circuit courts of the United States for the district of Indiana, the southern district of Illinois, and the northern district of Ohio, western division, all of which records are referred to and made a part of this deed:

Now, therefore, in conformity with said decrees, we, William P. Fishback and John McNulta, special masters as aforesaid, do hereby bargain, sell, and convey unto the said Sylvester H. Kneeland and to his heirs and assigns forever all of the premises, real and
123 personal property, rights, and franchises hereinbefore described as fully and completely as we may lawfully do under the authority aforesaid, free, clear, and discharged of all right, authority, and interest, claim, lien, and equity of redemption in or to the premises, real and personal property, rights, and franchises so sold and hereby conveyed and every or any part thereof of each and every of the defendants to said suits respectively and of all the persons claiming or to claim under them or any of them.

It is hereby stipulated that the court shall have, and hereby does reserve, full power and jurisdiction, upon the default of the said Sylvester H. Kneeland to comply with any order of the court respecting payment of the purchase-money, to retake possession of said property and forthwith sell the same or any part thereof upon order of the court to that effect entered; and the said grantee further stipulates that he and his assigns will forthwith yield possession of said railroad and property upon such order of the court entered on his default in the payment of the purchase-money or any part thereof, as required by said decrees; and, further, that all money becoming due on appeals to the Supreme Court shall be deemed to be purchase-money, notwithstanding said decrees may have been superseded pending such appeal.

In witness whereof we have set our hands and seals hereunto, and we do now deliver this deed of conveyance, this 10th day of March, one thousand eight hundred and eighty-six.

WILLIAM P. FISHBACK. [SEAL.]
JOHN McNULTA. [SEAL.]
Special Masters.

STATE OF INDIANA, }
Marion County. }

Before me, the undersigned, a notary public within and for
124 said Marion county and State of Indiana, personally came

the above-named William P. Fishback and John McNulta and acknowledged the execution of the foregoing deed.

[SEAL.] Witness my hand and notarial seal this 10th day of March, A. D. 1886.

CHRIST. H. STEIN,
Notary Public.

125 And be it remembered that heretofore, to wit, at the May term, 1884, of said court, on the 17th day of July, 1884, before the Honorable William A. Woods, judge, the following proceedings were had in the above-entitled cause, to wit:

Comes now the Bass Foundry and Machine Works, by Combs, Bell and Morris, its solicitors, and files its claim herein in the words following, to wit:

"Comes now the Bass Foundry & Machine Works, a corporation, by its attorneys, Combs, Morris & Bell, and respectfully represents that said defendant railroad company is indebted to it in the sum of $10,435.34 and interest thereon, as stated in the account filed herewith and made a part hereof; that said indebtedness is the balance due upon an open account for goods, wares, merchandise, & supplies furnished said railroad company by said Bass Foundry & Machine Works; that said sup-lies were furnished within the period of six months next prior to the appointment of a receiver in this cause. Wherefore said Bass Foundry & Machine Works asks that said claim so due it may by the court be
126 allowed and declared to be a preferred claim and ordered to be paid as such, and for all other and further necessary and proper relief.

BASS FOUNDRY & MACHINE WORKS,
By COMBS, BELL & MORRIS, *Its Attorneys.*

FORT WAYNE, IND., *July* 15, 1884.

T., C. & St. L. R. R. Co. Bought of Bass Foundry and Machine Works.

1882.						
July	3.	For 1 lot castings,	5,870 lb,	@ 2.28		133 84
"	6.	" 1 "	4,393	" 2.28		100 16
"	8.	" 1 "	5,253	" 2.28		119 77
"	12.	" 1 "	6,965	" 2.28		158 80
"	15.	" 1 "	5,471	" 2.28		124 74
"	18.	" 1 "	5,147	" 2.28		117 35
"	21.	" 1 "	4,883	" 2.28		111 33
"	21.	" 1 "	3,780	" 2.28		86 18
"	25.	" 1 "	6,070	" 2.28		138 39
"	28.	" 1 "	8,705	" 2.28		198 47
Aug.	1.	" 1 "	5,373	" 2.28		122 50
"	5.	" 1 "	5,695	" 2.28		129 85
"	8.	" 1 "	2,725	" 2.28		62 13
"	8.	" 1 "	1,235	" 2.28		28 16
"	12.	" freight on 30 prs. wheels from Delphos			13 50	

			"	40 26" wheels, @ 7.50			300 00	
			"	20 24" " @ 7.00			140 00	
			"	boring & fitting 30 prs. wheels			52 50	
			"	pressing off 60 old wheels			15 00	
127			For	pressing on 60 new wheels			15 00	
			"	straightening 9 old axles			15 75	
			"	turning 8 journals			2 00	
							$553 75	
				Less 60 old wheels, 18,200 lb, @ $28			227 50	
								326 25
Aug.	14.	For	1	lot castings,	4,520 lb,	@ 2.28		103 06
"	"	"	1	"	5,475 lb,	2.28		124 83
"	15.	"	1	"	343 lb,	2.28		7 82
"	"	"	1	"	1,630 lb,	2.28		37 16
				Amounts carried forward				2,230 79
				Amounts bro't forward				2,230 79
"	17.	For	1	lot castings,	4,885 lb,	@ 2.28		111 38
"	21.	"	1	"	455	" 2.28		10 37
"	21.	"	1	"	10,810	" 2.28		246 47
"	23.	"	1	"	8,520	" 2.28		194 26
"	26.	"	1	"	11,242	" 2.28		256 32
"	30.	"	1	"	8,685	" 2.28		198 02
Sep.	2.	"	1	"	6,625	" 2.28		151 05
"	6.	"	1	pc. shafting,	462	" 8c.		36 96
"	7.	"	1	lot castings,	9,625	" 2.28		219 45
"	7.	"	pes.	hammered iron,	150 lb,	@ 10c.		15 00
"	11.	"	1	lot castings,	9,625 lb,	@ 2.28		138 39
"	14.	"	1	"	4,160	" 2.28		94 85
"	19.	"	1	"	2,700	" 2.28		61 56
"	21.	"	1	"	3,548	" 2.28		80 89
"	26.	"	1	"	9,080	" 2.28		207 02
"	30.	"	1	"	8,895	" 2.28		202 80
Oct.	3.	"	1	"	4,520	" 2.28		103 05
"	6.	"	1	"	14,618	" 2.28		333 29
"	9.	"	16	26" tend. wheels,		@ 7.50	120 00	
"	9.	"	16	24" eng. "		7.00	112 00	
"	9.	"	6	20 " "		6.00	36 00	
128								
1882.								
Oct.	9.	For	1	lot castings,	6,225 lb,	@ 2.28	141 93	
								409 93
"	11.	"	4	30" eng. wheels,		@ 6.00	24 00	
"	"	"	4	24" " "		" 7.00	28 00	
"	"	"	6	26" " "		" 7.50	45 00	
"	"	"	3	26" tend. "		" 7.50	22 50	

"	"	"	1	lot castings, 4,798 lb, @ 2.28		109 39		
							228 89	
"	13.	"	1	5½ driving axle, 310 lb, @ 6c.			18 60	
				Amount carried forward				5,549 34
				Amount bro't forward				$5,549 34
"	14.	For	1	26 tend. wheel		7 50		
"	"	"	4	26 eng. "	@ 7.50	30 00		
"	"	"	1	lot castings, 340 lb,	@ 2.28	7 75		
"	"	"	1	" 8,550 lb,	2.28	194 94		
							240 19	
"	18.	"	6	26 eng. wheel-,	@ 7.50	45 00		
"	"	"	1	lot castings, 8,518 lb,	@ 2.28	194 21		
							239 21	
"	20.	"	4	26 wheels,	@ 7.50	30 00		
"	"	"	1	lot castings, 3,780 lb,	@ 2.28	86 18		
							116 18	
"	24.	"	1	" 3,775	" 2.28		86 07	
"	28.	"	1	" 7,638	" 2.28		174 14	
Nov.	1.	"	1	" 9,625	" 2.28		219 45	
"	4.	"	1	" 13,478	" 2.28		307 29	
"	7.	"	1	" 5,781	" 2.28		131 80	
"	9.	"	1	" 5,968	" 2.28		136 07	
"	14.	"	1	" 9,668	" 2.28		220 43	
"	16.	"	1	" 5,576	" 2.28		127 13	
"	18.	"	1	" 5,643	" 2.28		128 66	
"	21.	"	1	" 6,560	" 2.28		149 56	
"	23.	"	1	" 8,249	" 2.28		188 08	
"	23.	"	1	" 1,575	" 2.28		35 91	
"	25.	"	4	4¾ axles, 933 lb,	@ 4c.		37 32	
"	27.	"	1	lot castings, 1,795 lb,	@ 2.28		40 93	
"	"	"	1	" 16,960	" 2.28		158 69	

129

Nov.	27.	For	1	lot castings, 320 lb,	@ 2.28		7 30	
Dec.	1.	"	1	" 740	" 2.28		16 87	
"	1.	"	1	" 335	" 2.28		7 64	
"	1.	"	1	" 5,555	" 2.28		126 65	
				Amount carried forward				8,444 91
				Amount bro't forward				8,444 91
"	4.	For	1	lot castings, 260 lb,	@ —		5 93	
"	"	"	1	" 242	"		5 52	
"	"	"	1	" 3,328	"		75 88	
"	"	"	8	26 wheels,	@ 7.50		60 00	
"	6.	"	1	lot castings, 260 lb,	@ 2.28		5 93	
"	"	"	1	" 3,272			74 60	
"	"	"	1	" 110			2 51	
"	"	"	6	26" wheels,	@ 7.50		45 00	
"	9.	"	1	lot castings, 665,	@ 2.28		15 16	

"	"	"	1	"	2,990,	"	2.28		68 17
"	"	"	1	"	355	"	2.28		8 09
"	"	"	4	26 wheels,			@ 7.50		30 00
"	13.	"	7	26	"	"	7.50		52 50
"	"	"	1	lot castings,	1,410	lb,	@ 2.28		32 15
"	"	"	1	"	3,810	"	"		86 87
"	"	"	1	"	80	"	"		1 82
"	16.	"	1	"	6,191	"	"		141 15
"	20.	"	1	"	5,980	"	"		136 34
"	"	"	1	"	165	"	"		3 76
"	22.	"	1	"	3,040	"	"		69 31
"	22.	"	1	"	418	"	"		9 53
"	27.	"	1	"	5,494	"	"		125 26
"	30.	"	1	"	4,130	"	"		94 16
"	"	"	1	"	1,795	"	"		40 93
"	"	"	1	"	3,980	"	"		90 74
"	"	"	1	"	340	"	"		7 75

130

1883.				Amount carried forward					9,733 97
				Amount bro't forward					9,733 97
Jan'y	2.	For	1	lot castings,	330	lb,	@ 2.28		7 52
"	"	"	1	"	620	"	"		14 14
"	"	"	1	"	2,280	"	"		51 98
"	"	"	1	"	4,385	"	"		99 98
"	4.	"	1	"	3,790	"	"		86 41
"	"	"	1	"	2,545	"	"		58 03
"	6.	"	1	"	2,115	"	"		48 22
"	"	"	1	"	120	"	"		2 74
"	"	"	1	"	675	"	"		15 39
"	"	"	1	"	5,340	"	"		121 75
"	9.	"	1	"	260	"	"		5 93
"	"	"	1	"	1,597	"	"		36 41
"	"	"	1	"	390	"	"		8 89
"	"	"	1	"	4,658	"	"		106 20
"	12.	"	1	"	80	"	"		1 82
"	"	"	1	"	4,345	"	"		99 07
"	"	"	1	"	430	"	"		9 80
"	"	"	1	"	2,475	"	"		56 43
"	16.	"	1	"	275	"	"		6 27
"	"	"	1	"	80	"	"		1 82
"	"	"	1	"	170	"	"		3 88
"	"	"	1	"	3,958	"	"		90 24
"	"	"	1	"	910	"	"		20 75
"	"	"	12	24" wheels,			@ 7.00		84 00
"	18.	"	1	lot castings,	493	lb,	@ 2.28		11 24
"	"	"	1	"	170	"	"		3 88
"	"	"	1	"	5,840	"	"		133 15
"	"	"	1	"	820	"	"		18 70
				Amounts carried forward					$10,938 61

131

1883.									
				Amount bro't forward					10,938 61
Jan.	20.	For	1	lot castings,	550 lb,	@	2.28		12 54
"	"	"	1	"	2,680	"	"		61 10
"	"	"	1	"	2,460	"	"		56 09
"	23.	"	1	"	6,382	"	"		145 51
"	"	"	1	"	4,118	"	"		93 89
"	"	"	1	"	375	"	"		8 55
"	25.	"	1	"	8,318	"	"		189 65
"	"	"	1	"	610	"	"		13 91
"	27.	"	4	30" w-eels,	2,350	"	2¼		52 88
"	"	"	1	lot castings,	2,140	"	2.28		48 79
"	"	"	1	"	3,680	"	"		83 90
"	"	"	1	"	585	"	"		13 34
"	30.	"	1	"	657	"	"		14 98
"	"	"	1	"	250	"	"		5 70
"	"	"	1	"	5,280	"	"		120 39
"	"	"	4	30 spoke wheels,	2,350,	@	2¼		52 88
Feb.	1.	"	1	lot castings,	6,816 lb,	@	2.28		155 41
"	7.	"	1	"	10,685	"	"		243 62
"	10.	"	1	"	7,675	"	"		174 98
"	13.	"	1	"	4,373	"	"		99 71
"	15.	"	1	"	4,740	"	"		108 07
"	"	"	1	"	660	"	"		15 05
"	19.	"	1	"	6,303	"	"		143 70
"	22.	"	1	"	2,588	"	2.12½		55 00
"	"	"	1	"	170	"	"		3 61
"	"	"	1	"	7830	"	"		166 39
"	27.	"	1	"	10,298	"	"		218 83
				Amount carried forward					13,297 08

132

1883.									
				Amount bro't for'd					13,297 08
March	2.	For	1	lot castings,	8,913 lb,	@	2.12½		189 40
"	"	"	1	"	7,162	@	"		152 19
		"	diff. between price per gro. ton allowed in 23,265 lbs. cast scrap, $20, and that named by M. Bass at $18 pr. gro. ton						20 72
"	3.	"	1	lot castings,	2,698 lbs.,	@	2.12½	57 33	
"	"	"	1	"	2,133	"	"	45 33	
									102 66
"	6.	"	10	26" wheels,		"	6.50	65 00	
"	"	"	1	lot castings,	8,072	"	2.12½	171 53	
									236 53
"	7.	"	10	26 wheels,		@	6.50	65 00	
"	"	"	1	lot castings,	4,620	"	2.12½	98 18	
									163 18
"	9.	"	6	wheels,		"	6.50	39 00	
"	"	"	1	lot castings,	2,535		2.12½	53 87	
"	"	"	1	"	928	"	2.12½	19 72	
									112 59

"	12.	"	10 26 wheels,		"	6.50	65 00	
"	"	"	1 lot castings,	820	"	2.12½	17 43	
"	"	"	1 "	6,167	"	"	131 05	
								213 48
"	14.	"	10 26 wheels,		"	6.50	65 00	
"	"	"	1 lot castings,	3,116	"	2.12½	66 22	
"	"	"	1 lot castings,	1,890	"	"	40 16	
								171 38
"	16.	"	4 26 wheels,		"	6.50	26 00	
"	"	"	1 lot castings,	315	"	2.12½	6 69	
"	"	"	1 "	3,978	"	"	84 53	
"	"	"	1 "	2,420	"	"	51 43	
								168 65
"	22.	"	1 "	6,181	"	"	131 35	
"	22.	"	1 "	2,760	"	"	58 65	
								190 00
			Amount carried forward					$15,017 86

1883.			Amount bro't forward					15,017 86
M'ch	30.	For	1 lot castings,	134 lb,	@	2.12½		2 85
"	31.	"	1 "	1,010	"	"		21 46
"	31.	"	1 "	1,613	"	"		34 28
Ap'l	3.	"	1 "	2,517	"	"		53 49
"	"	"	1 "	4,280	"	"		90 95
"	5.	"	1 "	5,640	"	"		119 85
"	"	"	1 "	3,078	"	"		65 41
"	7.	"	6 24 wheels,	@ 6.00			36 00	
"	"	"	1 lot castings,	240 lb,	@	2.12½	5 10	
"	"	"	1 "	4,519	"	"	96 03	
"	"	"	1 "	3,405	"	"	72 36	
"	"	"	1 "	80	"	"	1 70	
								211 19
"	9.	"	1 "	161	"			2 15
"	11.	"	20 24 wheels,	$6			120 00	
"	"	"	1 lot castings,	4,752	"	"	100 98	
"	"	"	1 "	7,044	"	"	149 69	
"	"	"	1 "	1,552	"	"	32 98	
								403 65
"	14.	"	6 24 wheels,	$6.00			36 00	
"	"	"	1 lot castings,	2,847	"	"	60 50	
"	"	"	1 "	7,375	"	"	156 72	
"	"	"	1 "	740	"	"	15 73	
								268 95
"	"	"	50 car axles,	12,316,	3c.			369 48
"	21.	"	interest allowed in ac. from July 1, 1882, to Feb. 1, 1883					573 53
"	"	"	1 lot castings,	113 lb,	@	2.12½		2 40
"	"	"	1 lot castings,	900	"	"		19 13
"	"	"	1 "	12,151	"	"		258 21
			Amount carried forward					$17,514 84

134

1883.							
			Amount bro't forward				17,514 84
Ap'l	21.	For	1 lot castings, 2,545 lb, @ 2.12½				54 08
"	"	"	6 24″ wheels, $6				36 00
"	"	"	5 20 " 5.50		27 50		
"	"	"	12 24 " $6		72 00		
"	"	"	1 lot castings, 820 lb, 2.12½		17 43		
"	"	"	1 " 5,498 "		116 83		
							233 76
"	24.	"	6 26 wheels, 2,709, 2⅛		57 56		
"	"	"	3 20 " 5.50		16 50		
"	"	"	6 22 " 5.75		34 50		
							108 56
"	"	"	1 lot castings, 10,400, 2.12½				221 00
"	26.	"	4 22″ wheels, 5.75		23 00		
"	"	"	2 26 " sp., 900, 2⅛		19 13		
"	"	"	1 lot castings, 11,260, 2.12½		239 29		
							281 42
"	28.	"	2 22 wheels, 5.75		11 50		
"	"	"	6 24 " 6.00		36 00		
"	"	"	2 30 sp. " 1,140 lb, 2⅛		24 23		
"	"	"	2 26 " " 909 lb, 2⅛		19 32		
"	"	"	1 lot castings, 2,250 lb, 2.12½		47 81		
"	"	"	1 " 170 lb, 2.12½		3 61		
"	"	"	1 " 8,002 "		170 04		
							312 51
May	1.	"	6 24 wheels, $6		36 00		
"	"	"	2 30 sp. " 1,142 lb, @ 2½		24 27		
"	"	"	1 lot castings, 5,911 " 2.12½		125 61		
"	"	"	1 " 1,090 "		23 16		
"	"	"	1 " 250 "		5 31		
							214 35
"	4.	"	6 26 wheels, 6.50		39 00		
"	"	"	2 26 sp. " 910 lb, 2⅛		19 34		
							58 34
			Amount carried forward				19,034 86

135

1883.							
			Amount bro't forward				19,034 86
May	4.	For	2 30 sp. wheels, 1,140 lb, @ 2⅛		24 23		
"	"	"	1 lot castings, 1,970 " 2.12½		41 86		
"	"	"	1 " 9,003 " "		191 31		
"	"	"	1 " 1,160 " "		24 65		
"	"	"	1 " 40 " "		85		
							282 90
"	5.	"	interest on above				1 79
"	7.	"	8 26″ wheels, $6.50		52 00		
"	"	"	1 lot castings, 1,430 lb, @ 2.12½		30 39		
"	"	"	1 " 6,123 "		130 11		
"	"	"	1 " 1,780 "		37 83		
							250 33

"	9.	"	6 26 wheels, $6.50	39 00	
"	"	"	1 lot castings, 2,885, 2.12½	61 31	
"	"	"	1 " 4,526, "	96 18	
"	"	"	1 " 2,770, "	58 86	
"	"	"	1 " 620, "	13 18	
					268 53
"	14.	"	10 26 wheels, $6.50	65 00	
"	"	"	1 lot castings, 5,860, 2.12½	124 53	
"	"	"	1 " 1,210, "	25 71	
					215 24
"	"	"	1 " 2,346, "		49 85
"	16.	"	10 26 wheels, $6.50	65 00	
"	"	"	4 22 " 5.75	23 00	
"	"	"	1 lot castings, 2,255, 2.12½	47 92	
"	"	"	1 " 6,063, "	128 84	
					264 76
"	19.	"	10 26 wheels, $6.50	65 00	
"	"	"	4 22 " 5.75	23 00	
"	"	"	1 lot castings, 2,730 lb, 2.12½	58 02	
"	"	"	1 " 5,668 "	120 44	
					266 46
			Amount carried forward		$20,634 72

136

1883.			Amount bro't forward		20,634 72
May	22.	For	2 22 wheels, 5.75	11 50	
"	"	"	1 lot castings, 2,090 lb, @ 2.12½	44 41	
"	"	"	1 " 85	1 81	
"	"	"	1 " 6,580	139 83	
					197 55
"	26.	"	6 26" wheels, 6.50	39 00	
"	"	"	12 30 " 9.50	114 00	
"	"	"	4 22 " 5.75	23 00	
"	"	"	1 lot castings, 3,890, 2.12½	82 66	
"	"	"	1 " 1,053, "	234 88	
"	"	"	1 " 390, "	8 29	
"	"	"	1 " 5,418, "	115 13	
					616 96
"	29.	"	6 26" wheels, 6.50	39 00	
"	"	"	5 22 " 5.75	28 75	
"	"	"	1 lot castings, 1.240, 2.12½	26 35	
"	"	"	1 " 7,705, "	163 73	
					257 83
June	2.	"	5 22, 5.75	28 75	
"	"	"	1 lot castings, 13.943, 2.12	296 29	
"	"	"	1 " 2,067, "	43 92	
"	"	"	1 " 88, "	1 87	
					370 83
"	5.	"	1 12 x 20 slide-valve engine		800 00
"	6.	"	1 lot castings, 1,860 lb, 2.12½	39 53	

"	"	"	1	"	10,295	"	----	218 77	
									258 30
"	8.	"	1	"	6,410	"	----	136 21	
"	"	"	1	"	3,710	"	----	78 84	
									215 05
"	11.	"	1	"	5,820	"	----	123 68	
"	"	"	1	"	6,785	"	----	144 18	
									267 86
				Amount carried forward			----		$23,619 10

137

1883.				Amount bro't forward					$23,619 10
June	14.	For	1	lot castings,	8,190	lb,	2.12½	174 04	
"	"	"	1	"	1,540	"	----	32 73	
"	"	"	1	"	7,255	"	----	154 16	
"	"	"	1	"	244	"	----	5 19	
									366 12
"	16.	"	1	"	460	"			9 78
"	18.	"	6	26 sp. wheels,	2,699	lb,	2½	57 35	
"	"	"	1	lot castings,	8,790,	2.12½		186 79	
"	"	"	1	"	8,010,	"		170 21	
									414 35
"	20.	"	6	26 sp. wheels,	2,700,	2⅛		57 38	
"	"	"	1	lot castings,	2,260	lb,	2.12½	48 03	
"	"	"	1	"	3,778	"	----	80 28	
									185 69
"	22.	"	1	"	6,490	"	----	137 91	
"	"	"	1	"	4,005	"	----	85 11	
									223 02
"	26.	"	1	"	5,617	"	----	119 36	
"	"	"	1	"	7,920	"	----	168 30	
									287 66
"	28.	"	1	"	1,531	"	----	32 53	
"	"	"	1	"	6,202	"	----	131 79	
"	"	"	1	"	5,858	"	----	124 48	
									288 80
"	30.	"	6	26 wheels,	5.75			34 50	
"	"	"	1	lot castings,	3,410,	2.12½		72 46	
"	"	"	1	"	2,320,	"		49 30	
									156 26
July	5.	"	6	22 wheels,	5.75			34 50	
"	"	"	12	26 sp. "	5,402	lb,	2⅛	114 79	
"	"	"	1	lot castings,	7,130,	2.12½		151 51	
"	"	"	1	"	2,478,	"		52 66	
									353 46
"	7.	"	1	"	7,075,			150 35	
"	"	"	6	22 wheels,	$5.75			34 50	
									184 85
				Amount carried forward					$26,089 09

138

1883.									
			Amount bro't forward						$26,089 09
July	10.	For	3	22 wheels, 5.75			17 25		
"	"	"	1	lot castings, 7,483 lb, 2.12½			159 01		
"	"	"	1	" 2,110 "			44 84		
								221 10	
"	11.	"	1	" 103 "				2 19	
"	16.	"	3	22 wheels, 5.75			17 25		
"	16.	"	1	lot castings, 3,083 lb, "			65 51		
"	16.	"	1	" 10,618 "			225 63		
								308 39	
"	20.	"	1	" 793 "			16 85		
"	"	"	1	" 6,670 "			141 74		
								158 59	
"	21.	"	1	" 105 "				2 23	
"	24.	"	1	" 1,950 "			41 44		
"	"	"	1	" 5,783 "			122 89		
								164 33	
"	27.	"	1	" 1,360 "			28 90		
"	"	"	1	" 4,380 "			93 08		
								121 98	
									$27,067 90

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1883.					
Mar.	25.	By	cast scrap, 36,000 lb, 18.00		324 00
Apr.	6.	"	old wheels, 13,666 lb, 22.40		136 66
"	"	"	cast scrap, 24,000 lb, 18.00		216 00
"	"	"	" " 12,000 lb, 18.00		108 00
"	"	"	old rails, 67.595 tons, 22.00		1,479 84
"	14.	"	old wheels, 27,334 lb, 22.40		273 34
"	30.	"	wro't scrap, 17,035 lb, 25.50		193 81
"	"	"	cast " 27,710 lb, 20.00		247 60
"	"	"	" " 22,255 lb, 20.00		198 70
"	"	"	" " burnt, 1,810 lb, 10.00		8 08
May	1.	"	cash		736 12
"	2.	"	trim-ings, 13,600 lb, 8.00		54 40
"	2.	"	sheet scrap, 1,735, 6.00		5 21
"	15.	"	old wheels, 20,000 lb, 22.40		200 00
"	"	"	wro't scrap, 20,000 lb, 24.00		240 00
"	16.	"	cast scrap, 40,062 lb, 18.00		360 56
"	"	"	" " 36,200 lb, 18.00		325 80
"	"	"	" " burnt, 3,850 lb, 9.00		15 82
June	13.	"	draft		1,758 65
"	19.	"	old wheels, 24,475 lb, 22.40		244 75
"	"	"	cast scrap, 12,030 lb, 18.00		108 27
"	30.	"	old wheels, 40,040 lb, 22.40		400 40
"	"	"	cast scrap, 16,330 lb, 18.00		146 97
"	"	"	wro't scrap, 5,250 lb, 1.20		63 00

"	"	"	"	10,762 lb, 1.20	129 15
"	"	"	old rails,	19,030 lb, 22.00	187 00
July	16.	"	wro't scrap,	27,190 lb, 24.00	326 28
"	"	"	"	39,865 lb, 24.00	478 38
			Amount carried forward		$8,966 79

140

			Amount bro't forward	$8,966 79
July	16.	By cast	scrap, 15,715 lb, 18.00	141 43
"	"	"	burnt " 6,310 lb, 9.00	28 40
"	"	"	old wheels, 40,000 lb, 22.40	400 00
"	"	"	cast scrap, 32,615 lb, 18.00	293 53
"	"	"	burnt scrap, 7,110 lb, 9.00	32 00
"	30.	"	old wheels, 79,470 lb, 22.40	794 70
"	"	"	cast scrap, 71,740 lb, 90c.	645 66
"	"	"	" " burnt, 6,874 lb, 45	30 93
"	"	"	old axles, 24,605 lb, 1.20	295 26
"	"	"	wro't scrap, 51,060 lb, 1.20	612 72
"	"	"	sheet " 6,995 lb, 30c.	20 99
"	"	"	boiler " 840 lb, 1.20	10 08
"	"	"	steel " 25,050 lb, 9.00	112 72
"	"	"	trim-ings, 6,100 lb, 40c.	24 40
"	31.	"	old rails, 201.210, 21.00	4,222 95
				16,632 56

Recapitulation.

Debits	$27,067 90
Credits	16,632 56
Balance due	$10,435 34

with interest to be added.

By cash July 8, 1883, omitted from above	$1,750 02	
By differences with auditor allowed	163 74	
		$1,913 76
Balance due, with interest		$8,521 58

Upon said account there were given by said railroad com-
141 pany notes of said Bass Foundry & Machine Works as follows:

One note at	4	mos.,	April	5, '83	$1,758 63
" " "	5	"	"	5, '83	1,767 25
" " "	6	"	"	5, '83	1,775 89
" " "	7	"	"	5, '83	1,784 49
" " "	8	"	"	5, '83	1,793 14
" " "	9	"	"	5, '83	1,801 73
" " "	6	"	"	24, '83	54 67

Which notes have never been paid and which are herewith surrendered for cancellation.

BASS FOUNDRY & MACHINE WORKS,
By COMBS, BELL & MORRIS, *Its Attorneys.*

UNITED STATES OF AMERICA, *District of Indiana,* } ss:

Albert Guild, being duly sworn, on his oath says that he is the agent of the Bass Foundry & Machine Works, the above-named claimant, and duly authorized to make this affidavit on its behalf; that the above and foregoing account is correct, just, and true, and that the statements therein contained are true as therein stated; that the goods therein named were furnished, as therein stated, by said Bass Foundry & Machine Works to said Toledo, Cincinnati & St. Louis Railroad Company, and that the balance shown by said account remains due and unpaid.

ALBERT D. GUILD.

142 Subscribed and sworn to before me this 17 day of July, A. D. 1884.

NOBLE C. BUTLER, *Clerk.*

I have examined the foregoing account and find the same correct, and that there is due the Bass Foundry and Machine Works, as therein stated, the balance of eight thousand five hundred and twenty-one dollars and fifty-eight cents ($8,521.58) February 25, 1885.

C. S. ANTHONY, *Auditor.*"

It is thereupon ordered that the said claim of the Bass Foundry and Machine Works against the Toledo, Cincinnati & St. Louis Railroad Company be referred to William P. Fishback, master in chancery, who is directed to take the evidence in respect to the same and report such evidence, with his finding thereon, to this court, and said master is directed to give proper notice of the hearing of such evidence to the receiver in said cause and the attorneys for the bondholders therein.

143 And afterwards, at the November term, 1884, of said court, on the 4th day of March, 1885, before the Honorable William A. Woods, one of the judges aforesaid of said court, the following further proceedings in said cause were had, to wit:

Comes now William P. Fishback, master in chancery, and files his report upon the petition of the Bass Foundry & Machine Works herein in the words following, to wit:

The undersigned, the master to whom this petition and claim was referred, respectfully reports as follows:

Mr. Bell, counsel for the petitioner, and Mr. John M. Butler, counsel for the bondholders, to save trouble and expense, agreed to submit the itemized statement, appended to the petition, to Mr. C. S. Anthony, auditor for the railroad company and the receiver, to enable him to compare the same with the books in the office of the

receiver and to take his statement of the account and balance in lieu of other evidence.

This has been done, and Mr. Anthony's statement in writing will be found on the last page of the petition, immediately following the verification of the account by Albert C. Guild.

144 By this statement the balance due on the account is eight thousand five hundred and twenty-one dollars and fifty-eight cents ($8,521.58).

The balance, as shown by the account filed with the petition, was $10,435.34. This is reduced by a credit of $1,750.02, paid in July (8), 1883, which was omitted from the original account, and by $163.75 of errors claimed by Mr. Anthony and allowed by the claimant.

For convenience of the court and counsel I append hereto a statement of the amounts of supplies furnished by the petitioner by months and also a statement of the amounts paid in each month:

1882.			
July.	Supplies furnished	$1,289 03	
August.	" "	1,958 58	
September.	" "	1,207 97	
October.	" "	1,949 15	
November.	" "	1,888 62	
December.	" "	1,440 22	
1883.			
January.	" "	2,176 92	
February.	" "	1,384 37	
March.	" "	1,779 37	
"	Paid		324 00
April.	Supplies furnished	3,685 72	
"	Paid		2,862 03
May.	Supplies furnished	2,949 89	
"	Paid		1,937 91
June.	Supplies furnished	3,843 72	
"	Paid		3,038 19
July.	Supplies furnished	1,517 12	
"	Paid		10,220 45
		$27,065 68	$18,382 58
	Balance	8,683 10	
	Deduct additional credit claimed & allowed	161 52	
	Bal.	$8,521 58	

Respectfully submitted.

W. P. FISHBACK, *Master.*

145 And afterwards, to wit, at the November term of said court, on the 21st day of December, 1885, before the Honorable William A. Woods, one of the judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

It is now ordered by the court that all claims filed in the above-entitled cause after the 5th day of November, 1885, on which day A. J. Ricks, Esq., was appointed special master herein by order of this court, be, and the same are hereby, referred to said special master, A. J. Ricks, and are to be deemed and considered as falling under and being embraced in said order of reference to said A. J. Ricks, and any and all references heretofore made to any other master of any of said claims against said property filed since said 5th day of November, 1885, are hereby revoked.

This order is made to the end that the said special master, A. J. Ricks, may have full power to take and state the accounts of the receivership of said property from the beginning thereof to the end thereof, as contemplated by the order of his appointment, and to the end that there be no double references of claims filed since the appointment of said Ricks special master as aforesaid.

Any and all claims heretofore filed in these causes or either of them and referred to Jacob D. Cox, as special master, prior to said 5th day of November, 1885, are to remain as so referred to said Cox and are to be considered and reported upon by said master, Cox.

Any and all claims heretofore filed in this cause and referred to William P. Fishback, master, prior to said 5th day of November, 1885, shall be and remain as so referred to said Fish-
146 back, and are to be considered and reported upon by said Fishback—

The true intent and meaning of the said original order of appointment of November 5th, 1885, together with this modification thereof, being to give to said master, Ricks, full power and authority to take, investigate, and state the accounts of the receivership of said property from the beginning thereof, to wit, August 1st, 1883, down to the present time, and to take such testimony as may be by said master deemed necessary, and consider and report his findings, together with the evidence upon the said accounts and the doing of the said receivership, and upon any and all claims filed in said cause subsequent to the said 5th day of November, A. D. 1885.

And afterwards, to wit, at the November term of said court, on the 30th day of December, 1885, before the Honorable William A. Woods, one of the judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

It is hereby ordered that the orders or reference to A. J. Ricks, heretofore entered in this cause, be, and the same are hereby, modified in this: that all claims filed or that may be filed in the U. S. circuit court for the district of Indiana against the property of said railway or the fund arising from the sale thereof be, and the same are hereby, referred to W. P. Fishback, master of this court.

147 And afterwards, at the November term, 1885, of said court, on the 7th day of January, 1886, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in said cause were had, to wit:

And at the same time comes the Bass Foundry & Machine Works and files their claim herein in the words following, to wit:

Comes now Bass Foundry & Machine Works, a corporation duly organized under the laws of said State and doing business therein at the city of Fort Wayne, and asks to be allowed to intervene in said cause, and says that heretofore, to wit, on the 17th day of July, 1884, said petitioner filed its petition and claim in the cause of Grenville D. Braman *vs.* The Toledo, Cincinnati & St. Louis Railroad Company, then and still pending in said court, and in which cause there had been, by order of said court, a receiver, who had taken possession of all the property, rights, and franchises of said railroad company, in which petition and claim this petitioner claimed and asserted that there was due to it from said railroad company,
148 upon an account, for supplies furnished it within six months preceding the appointment of such receiver, the balance of $10,435.34, and that such supplies were furnished as aforesaid within six months next preceding the appointment of such receiver, and asking that said claim and balance might be allowed and by the court ordered to be paid as a preferred claim in said cause; that said petition and claim were by order of said court referred to Hon. Wm. P. Fishback as master to hear evidence and report thereupon; that thereafter, by agreement of parties, the amount so due upon said claim was fixed at the sum of $8,521.58, and J. M. Butler, for the bondholders' committee, endorsed upon said claim and petition the following: "Without admitting any lien for any supplies furnished prior to the receivership, I say OK; J. M. Butler, for bondholders' committee;" and thereupon said master found and allowed in favor of the petitioner the sum of $8,521.58, and on the 4th day of March, 1885, duly filed his report in said cause, endorsed by said Butler as aforesaid, reference to which petition, claim, account, master's report,
endorsement, and proceedings, now on file in said cause in
149 said court, is hereby made by this petitioner, from which the foregoing will more fully appear.

And your petitioner further avers that in the order of the court appointing a receiver, as aforesaid, of all the property of said railroad company is the following clause:

"And said receiver is hereby clothed with all the authority and rights usually given to a receiver by courts of equity to take charge of, care for, and operate a railroad; to make report of his acts and doings at least every two months to the court; to collect and receive the tolls, incomes, rents, and profits of said premises, and out of the same to maintain and keep the property safe and in good repair; to pay the debts due for wages and material and supplies which have been incurred in the operation and maintenance of the property during the six months last past."

And your petitioner avers that the said Central Trust Company, complainant in this cause, was a party to the said order so appointing a receiver as aforesaid, and was at the hearing wherein said order was made and did not object thereto.

Wherefore petitioner says that it became the duty of said
150 receiver and his successors in said trust to pay petitioner's said claim, it having originated and being for materials and supplies furnished said T., C. & St. L. R. R. Co. within six months

next preceding said appointment of said receiver from any funds coming into the hands of the court, whether arising from the income of said railroad or from the proceeds of the sale of said property so taken and held by said receiver; that said receiver did take & hold and operate said property in said trust; still holds & operates the same.

And your petitioner avers that if said receiver has not sufficient funds arising from the income of said property to pay petitioner's claim, with interest thereon, the same should be paid out of the proceeds arising from the sale of said property for the following, among other, reasons, these facts being alleged by your petitioner on information and belief:

1st. Because said Toledo, Cincinnati & St. Louis Railroad Company, during one year and particularly within six months next preceding the appointment of a receiver as aforesaid, diverted and used large sums of money for other purposes which should have been used and applied to the payment of claims for supplies, materials, and operating expenses, which, had it been properly
151 used, would have constituted a fund for the payment of petitioner's claim.

2d. That said receiver and his successors in said trust used and applied large sums arising from the income of said road from time to time to the improvement and betterment of said property which should have been applied upon plaintiff's claim and others of like character.

3rd. That continuously from the time of the organization of said T., C. & St. L. R. R. Co. until such appointment of said receiver, and especially within the last six months prior thereto, said railroad company diverted large sums of money from its current earnings that should have been used to pay current operating expenses to pay for permanent improvements and betterments on said company's railroad, thereby much increasing the value of the security of the holders of bonds secured by mortgage on said property and much increasing the amount of unpaid operating expenses, which petitioner avers, if not so diverted, would have gone to pay his said claim.

4th. That if the business and operations of said railroad and the collecting and application of its income had been done as a continuing business that said claim and others of like character
152 would have been paid not later than September, 1883; but, on the contrary, said receiver, notwithstanding he received from said company not less than $60,000 in cash assets, and also the income of said property for the months of August & September, 1883, about the sum of $300,000 more, all of which, if the business of said railroad had been conducted as a continuing business, would have been applicable to the payment of claims for labor, material, and supplies contracted prior to August, 1883, including petitioner's claims, yet said receiver paid of said claims only the sum of about $118,000.00, including the *the* claims of all the employés of said company for the month of June, 1883, and about $20,000.00 of the claims of such employés for the month of July, 1883.

5th. That said T., C. & St. L. R. R. Co. never paid any interest coupons on any of the bonds described in the original bill herein from such earnings, as the holders of said bonds well knew; that such interest as was paid by said company or its predecessors was paid from moneys arising from the sale of other securities of like kind, and after that source was exhausted the holders of said
153 bonds sold their coupons as they became due to either the Western Construction Company or the "Delphos trust" until the first day of October, 1882, when said T., C. & St. L. R. R. Co. made default in the payment of the coupons of the bonds issued on some of its divisions, and that non- of said coupons nor any falling due thereafter were paid except as follows:

Said T., C. & St. L. R. R. Co. having defaulted in the payment of its interest on October 1st, 1882, admitted publicly its inability to meet its interest coupons on all its mortgage and equipment trust bonds coming due January 1, 1883, April 1, 1883, & July 1, 1883, and solicited from the holders of its securities to a series of debenture bonds, amounting in all to $800,000.00, to enable it to pay its interest due and expenses, finish its railroad, pay its floating debt and interest to become due. All the holders of bonds named in the complainants' bill herein had full knowledge of said facts.

Subscriptions to the amount of $800,000.00 to said series of debenture bonds were secured from the holders of mortgage bonds of said company, including those named in the bill of complaint
154 in said principal causes, some subscribing cash and others coupons to become due (to be counted as such to said debenture subscription).

And your petitioner further states on information and belief, and charges the same to be true, that the officers of the said railroad company and holders of its bonds then and there stated and gave out to the general public, through the public prints, and to the holders of the floating debt of said company, that the holders of its bonds, including those named in the complainants' bill, had come forward with subscriptions to said debenture bonds in a sufficient amount to enable it to pay its floating debt, for operating expenses to finish its railroad, and to pay its interest coupons due and coming due, and which said subscription would be promptly paid.

And your petitioner is informed and believes and so avers that said subscriptions were payable as follows: 10% on Dec. 1, 1882, and 10% each month thereafter until paid; that this conduct of the bondholders and those assertions of the officers of said railroad company, supported, confirmed, and ratified by the acts of said bondholders, gave said railroad company credit and made it
155 possible to incur a large indebtedness for operating expenses, gave said railroad company large credit with material and supply men, and especially petitioner, and led them to believe that it would be promptly paid, yet neglected and refused to pay said subscription to said debenture bonds, except about $400,000.00, leaving $400,000.00 still due and unpaid, which, on account of some infirmity in the form of said subscription, cannot be enforced nor collected.

Wherefore your petitioner prays that, as there are no funds in the hands of said receiver with which to pay its said claim, *that* the court order the same to be paid from the proceeds of the sale arising from the sale of the property herein, or any other funds in the hands of the court property applicable thereto, and for such other and further relief as in equity and good conscience it may be entitled to.

COMBS, BELL & MORRIS,
Att'ys for Petitioner.

156 And afterwards, to wit, at the November term of said court, on the 12th day of March, 1886, before Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now William P. Fishback, Esq., master in chancery, and files his report upon the claim of the Bass Foundry and Machine Works herein in the words following, to wit:

In the Matter of the Intervening Petition of BASS FOUNDRY AND MACHINE WORKS for Supplies Claimed to Have Been Furnished to Receivers Dwight and Craig.

To the honorable court:

The account and statement filed with the intervening petition have been examined by Mr. Anthony, auditor of the receiver, and found to be correct as compared with the receiver's books.

I report and find that petitioner is entitled to an allowance for the sum of eight thousand and nine dollars and forty-two cents for supplies furnished said receivers, as follows:

157

Amount furnished from Oct. 1, 1883, to Dec. 1, 1883 (1st period)		$1,695 01
Amount furnished from Dec. 1, 1883, to Aug. 1, 1884 (2d period)		10,085 76
Amount furnished from Aug. 1, 1884, to April 18, 1885 (3d period)		1,085 14
		12,865 91
Credits during 1st period	None.	
" " 2d "	$2,291 63	
" " 3d "	2,565 06	
		4,856 69
Balance due		$8,009 22

Respectfully submitted.

WILLIAM P. FISHBACK, *Master.*

And afterwards, to wit, at the November term of said court, on the 30th day of March, 1886, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Sylvester H. Kneeland, trustee, &c., by McDonald,

Butler & Mason and R. G. Ingersoll, his solicitors, and files his exceptions to the report of the master upon the petition of the Bass Foundry and Machine Works herein in the words following, to wit:

158 Comes now Sylvester H. Kneeland, as trustee and representative of the first-mortgage bondholders holding bonds secured by the first mortgages upon the line of railroad and property extending from Toledo, Ohio, to East St. Louis, Illinois, involved in the foreclosure proceedings in the above-entitled cause, and as such purchaser of said line of railroad and property under the foreclosure decree in said above-entitled cause *and* now excepts to the report of William P. Fishback, master in chancery, filed on March 12, A. D. 1886, in the matter of the intervening petition and claim of The Bass Foundry and Machine Works *vs.* Receivers T., C. & St. L. R. R. Co., filed in the above-entitled cause, and for ground of exception said exceptor says:

1. Said exceptor excepts to said report for that the master has found that there is due to the Bass Foundry and Machine Works as against the line of railroad from Toledo, Ohio, to East St. Louis, Illinois, for the period from October 1, 1883, to December 1, 1883, being the period of Dwight's receivership, the sum of $1,695.01,

159 whereas the master ought to have found that there is nothing due for said period on account of the fact that the said property and railroad was then in the possession of a receiver appointed by this court on a creditor's bill, to wit, on the Braman bill, and at a time when neither the bondholders represented by this exceptor nor their committee nor the trustee in the mortgage under which they hold their bonds were parties to the litigation, and at a time when said bondholders and their representatives and trustees had no voice or control in the management or conduct of said property.

And, further, for that the master ought to have found that if said sum of $1,695.01 is due at all it is due and chargeable against the entire system, which was then operated as a unit, and only a small percentage thereof is due and chargeable upon the lines of railroad from Toledo, Ohio, to East St. Louis, Illinois.

2. Said exceptor further excepts for that the master has found and reported that there is due to said Bass Foundry and Machine

160 Works as against the said line from Toledo, Ohio, to East St. Louis, Illinois, for the period from December 1, 1883, to August 1, 1884, $10,085.76, less a credit paid during said period of $2,291.63, whereas said master should have found and reported that if said sum is due at all it is due and chargeable against the entire system, including many other lines of railroad other than the lines involved in the foreclosure proceedings in the above-entitled cause, inasmuch as during said period, to wit, from December 1, 1883, to August 1, 1884, the said entire system was used and operated as a unit and said supplies were procured for and used upon said entire system; therefore the said master should have found and reported that only a small percentage, to wit, about 45 per cent., of any sum due and chargeable against the entire system should be

charged against the lines represented by your exceptor as trustee of the bondholders and as purchaser of said property at foreclosure sale.

3. Said exceptor further excepts for that the master has found as chargeable against said line from Toledo, Ohio, to East St. Louis, Illinois, for the period from August 1, 1884, to April 1, 1885,
161 as due from said receivership to the said Bass Foundry and Machine Works the sum of $1,085.14, while at the same time the said master has found and reported that during said period last mentioned, to wit, from August 1, 1884, to April 18, 1885, the receivership of said line from Toledo, Ohio, to East St. Louis, Illinois, paid to the said Bass Foundry and Machine Works $2,565.06, being some $1,500 more paid than the total of supplies and materials received during said period.

4. Said exceptor further excepts to said master's report and shows to the court that heretofore, to wit, on March 4, 1885, the master filed an agreed report and statement of facts upon the petition of the Bass Foundry and Machine Works for supplies and materials furnished to said T., C. & St. L. R. R. Co. prior to the appointment of any receiver, from which report it is shown and is agreed that the T., C. & St. L. R. R. Co., during the six months next prior to the appointment of a receiver, paid to said Bass Foundry and Machine Works about $18,000 in cash, while during said six months said Bass Foundry and Machine Works only fur-
162 nished to said railroad company supplies and materials to the amount of about $11,000; and exceptor says that if the court shall hold, order, and decree that operating expenses and supplies furnished to said T., C. & St. L. R. R. Co. during the six months next prior to the appointment of a receiver shall be paid, then and in that case all credits for moneys paid and received during said six months next prior to said receivership should in law and equity be applied, first, in payment of supplies and materials furnished during said six months next prior to the receivership, and any overplus of such payments should be in law and equity applied in part payment upon supplies and materials furnished during said receivership.

Wherefore exceptor prays the court that if the said Bass Foundry and Machine Works are held and decreed to be entitled to any payment whatever for supplies and materials furnished during the receivership, to wit, from October 1, 1883, to April 18, 1885, being the period covered by the said master's report, that then and in that case there shall be applied upon the payment for such mate-
163 rials and supplies so furnished during the receivership the amount paid by the railroad company to said Bass Foundry and Machine Works during the six months next prior to the receivership over and above and in excess of full payment for all supplies and materials furnished by said Foundry and Machine Works during said six months next prior to the receivership.

And exceptor prays the court that said report may be set aside and held for naught, and that said intervening petition may be referred back to the said master with directions to make such reduc-

tion in the amounts found by the master as would result from an application of the surplus money paid by the railroad company to said foundry and machine works during the six months next prior to the appointment of a receiver, over and above payments for supplies and materials furnished during said six months, and that the said master may be required to find and report upon the percentages heretofore adopted by this court the exact sum due from
164 the two lines involved in the above-entitled foreclosure proceedings for each of the said periods mentioned in said master's report, separately and severally.

And exceptor will ever pray.

McDONALD, BUTLER & MASON AND
R. G. INGERSOLL,
Solicitors for Sylvester H. Kneeland, Exceptor.

And afterwards, to wit, at the November term of said court, on the 20th day of November, 1886, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

In the Matter of the Intervening Petition of BASS FOUNDRY AND MACHINE WORKS for Supplies Furnished Receivers Dwight and Craig.

The above matter coming on for hearing upon the report of the master, filed herein on the 12th day of March, 1886, and the exceptions thereto, filed March 30th, 1886, by Sylvester H. Kneeland, trustee, &c., and the court, being sufficiently advised, does now overrule said exceptions and approve and confirm said report.
165 It is therefore considered and adjudged by the court that there be allowed said Bass Foundry and Machine Works the said $8,009.22 so found due for supplies furnished said receivers, and that Noble C. Butler, clerk of this court, be, and he is hereby, authorized and directed to pay the same to said Bass Foundry and Machine Works out of any funds in the registry of the court in said cause.

It is further ordered that action upon so much of the claim of said Bass Foundry and Machine Works and exceptions thereto as relate to claims for supplies furnished before the appointment of any receiver for said defendant be reserved for further action by the court.

166 And afterwards, at the November term of said court, on the 18th day of December, 1886, before the Honorable William A. Woods, judge, as aforesaid of said court, the following further proceedings in said cause were had, to wit:

"In the Matter of the Intervening Petition of the BASS FOUNDRY AND MACHINE WORKS for Supplies Furnished Receivers Dwight and Craig.

Comes now Sylvester H. Kneeland, by solicitors, and prays an appeal to the Supreme Court of the United States from the order

and decree entered in the matter of said petition on the 20th day of November, 1886; which appeal is granted upon the filing of a supersedeas bond in the penalty of $12,000.

And afterwards, at said November term, 1886, on the 12th day of January, 1887, before the Honorable William A. Woods, judge as aforesaid of said court, the following further proceedings in said cause were had, to wit:

167 In the Matter of the Intervening Petition of the BASS FOUNDRY AND MACHINE WORKS.

Comes now Sylvester H. Kneeland, by solicitors, and files his appeal bond herein in the penalty of $12,000, with the American Surety Company of New York as surety thereon; which bond is approved by the court and is in the words following, to wit:

Know all men by these presents that we, Sylvester H. Kneeland and the American Surety Company of New York, are held and firmly bound unto the above-named The Bass Foundry and Machine Works in the sum of twelve thousand dollars ($12,000.00), to be paid to said The Bass Foundry and Machine Works; to which payment, well and truly to be made, we bind ourselves, jointly and severally, and our and each of our heirs, executors and administrators, successors or assigns, jointly by these presents.

Sealed with our seals and dated this 5th day of January, A. D. 1887.

Whereas the above-named Sylvester H. Kneeland hath prosecuted an appeal to the Supreme Court of the United States — for the district of Indiana:

168 Now, therefore, the condition of this obligation is that if the above-named Sylvester H. Kneeland shall prosecute his said appeal to effect and answer all costs and damages that may be adjudged or awarded against him if he shall fail to make good his plea, then this obligation to be void; otherwise in full force.

SYLVESTER H. KNEELAND. [SEAL.]
AMERICAN SURETY COMPANY,
[SEAL.] By RICH'D A. ELMER, *Pt.*
DAVID B. SICKELS, *Secretary.*

Signed and sealed in the presence of—
JOSEPH B. BRAMAN,
As to signature of Sylvester H. Kneeland.
JOSEPH B. BRAMAN,
FRED. F. NUGENT,
As to Am. S. Co.
H. H. WILLIAMS,
As to Am. S. Co.

Taken and approved by me this eleventh day of January, 1887.
WM. A. WOODS,
U. S. District Judge and ex Officio One of the Judges of the Circuit Court Aforesaid.

STATE OF NEW YORK, } ss:
City and County of New York, }

I, Joseph B. Braman, the undersigned authority, do hereby certify that the above-named Sylvester H. Kneeland, a party to a certain bond bearing date on the 5th day of January, A. D. 1887, and hereto annexed, personally appeared before me, in the city,
169 county, and State aforesaid, the said Sylvester H. Kneeland being personally well known to me as the person described in and who executed the said bond, and acknowledged the same to be his free act and deed, and that he executed the same. Said acknowledgements were made, taken, and are certified on this fifth day of January, A. D. 1887, at said city of New York.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed my official seals the day and year in this certificate last above written.

JOSEPH B. BRAMAN,

Commissioner of Deeds for the State of Indiana in and for the State of New York, Resident in said City of New York; Office, Equitable Building, 120 *Broadway, New York City.*

Commissioner of Deeds for the District of Columbia in and for the State of New York, Resident in said City of New York; Office, Equi-
[SEAL.] *table Building,* 120 *Broadway, New York City.*

JOSEPH B. BRAMAN,

[SEAL.] *Notary Public in and for the City and County of New York, in the State of New York, Resident in said City of New York.*

170 STATE OF NEW YORK, } ss:
City and County of New York, }

On this sixth day of January, A. D. 1887, before me personally appeared Richard A. Elmer, president of the American Surety Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the city of New York; that he is the president of the American Surety Company of New York; that he knew the corporate seal of said company, and that the seal affixed to the within instrument is such corporate seal; that it was affixed by order of the board of directors of said company, and that he signed the said instrument as president of said company by like authority, and that the liabilities of said company do not exceed its assets, as ascertained in the manner — in section 3, chapter 486, of the Session Laws of 1881; and the said Richard A. Elmer further said that he is acquainted with David B. Sickels and knew him to be the secretary of said company; that the signature of the said David B. Sickels subscribed to the said instrument is in the genuine handwriting of the said David B. Sickels and was thereto subscribed by the like order of the said board of directors and in the pres-
171 ence of him, the said Richard A. Elmer; and the said Richard A. Elmer, as such president and on behalf of said American Surety Company, acknowledged the execution of said annexed un-

dertaking and acknowledged the same to be the free act and deed of said American Surety Company for the uses and purposes therein contained.

In witness whereof I have hereunto set my hand and affixed my official seals the day and year last above written.

JOSEPH B. BRAMAN,
Commissioner of Deeds for the State of Indiana in and for
[SEAL.] *the State of New York, Resident in said City of New York;*
Office, Equitable Building, 120 *Broadway New York.*

JOSEPH BRAMAN,
[SEAL.] *Commissioner of Deeds for the District of Columbia in New York.*

JOSEPH B. BRAMAN,
[SEAL.] *Notary Public in and for the City and County of New York, in the State of New York.*

At a meeting of the board of directors of the American
172 Surety Company held at the office of the company on the 9th day of June, 1886, on motion it was—

"Resolved, That in pursuance of chapter 416, Laws of 1886, amending section eight hundred and eleven of the Code of Civil Procedure, the president or vice-president be, and either of them are hereby, authorized and empowered to sign, execute, and deliver any and all bonds or undertakings for or on behalf of the company and to attach thereto the seal of the company, the same to be attested by the secretary or assistant secretary."

CITY AND COUNTY OF NEW YORK, *ss:*

I, Fred. F. Nugent, secretary of the American Surety Company, have compared the foregoing resolution with the original thereon as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of — York, this 6th day of January, 1887.

FRED. F. NUGENT,
Assistant Secretary.

173 UNITED STATES OF AMERICA, *District of Indiana,* } *ss:*

I, Noble C. Butler, clerk of the circuit court of the United States for the district of Indiana, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record in the matter of the intervening petition of the Bass Foundry and Machine Works in the cause of The Central Trust Company of New York *vs.* The Toledo, Delphos & Burlington Railroad Company and The Toledo, Cincinnati & St. Louis Railroad Company *et al.* as fully as the same appears of record and on file in my office.

Seal Circuit Court of the United States, District of Indiana.

Witness my hand and the seal of said court, at Indianapolis, in said district, this 8th day of October, A. D. 1887.

NOBLE C. BUTLER, *Clerk.*

Endorsed on cover: Indiana C. C. U. S. No. 334. Sylvester H. Kneeland, appellant, *vs.* The Bass Foundry and Machine Works. Filed February 28, 1888.

APR 20 1891

SUPREME COURT

OF THE

UNITED STATES.

SYLVESTER H. KNEELAND,
Appellant,
vs.
THE BASS FOUNDRY AND MACHINE WORKS,
Appellee.

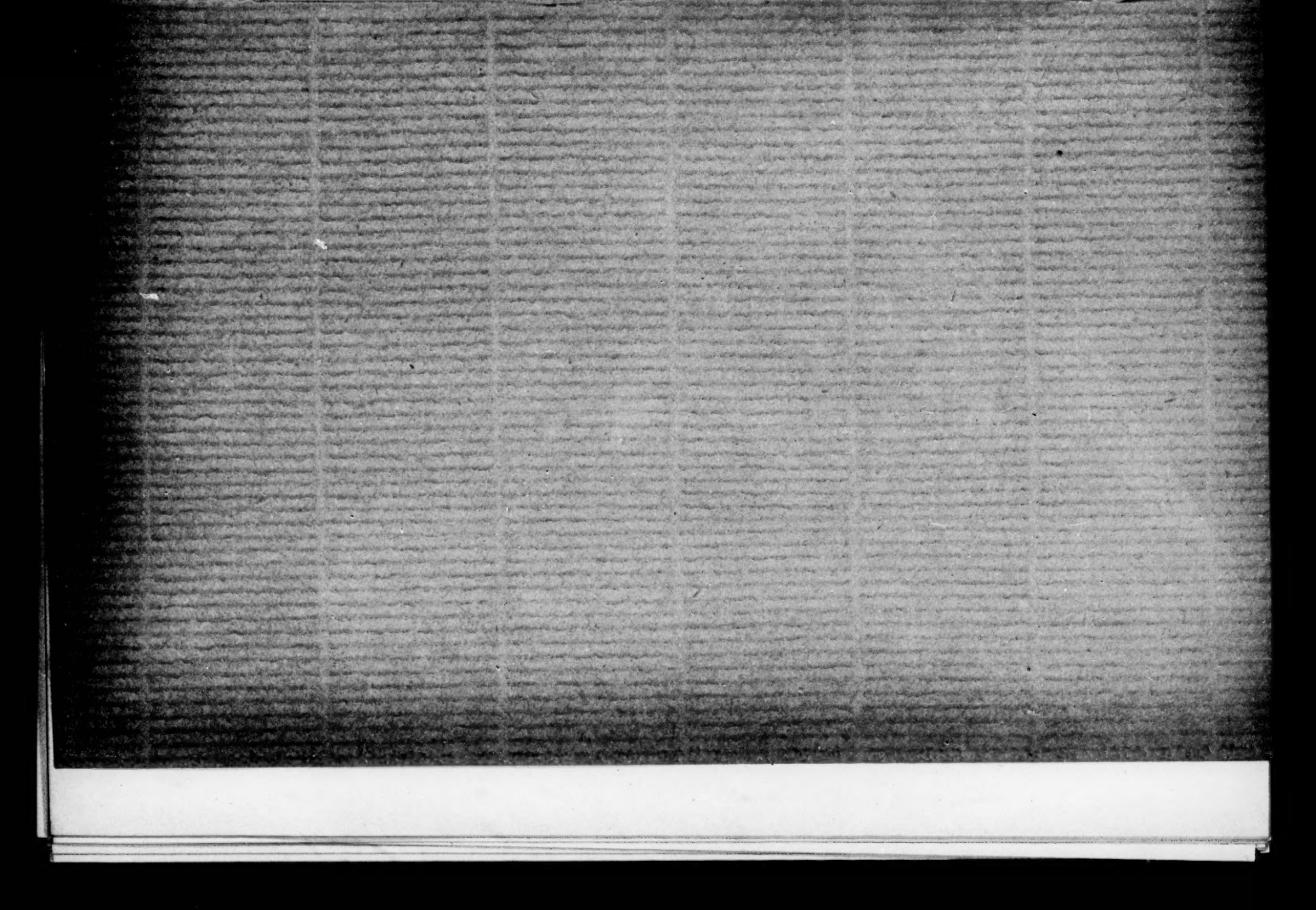
No. 334.
October Term, 1890.

Appeal from the Circuit Court of the United States for the District of Indiana.

BRIEF IN BEHALF OF APPELLANT.

BY JOHN M. BUTLER.

FRANK H. SMITH, INDIANAPOLIS



SUPREME COURT

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October Term, 1890.

Appeal from the Circuit Court of the United States for the District of Indiana.

BRIEF IN BEHALF OF APPELLANT.

STATEMENT.

The Bass Foundry and Machine Works is a corporation located at Fort Wayne, Indiana, near the eastern boundary line of the State. Delphos, Ohio, which is only a short distance from Fort Wayne, was the diverging point of the system of narrow gauge railroad owned and operated by the Toledo, Cincinnati and St. Louis Railroad Company. The various branches of the system extending into Southern Ohio, connected

with the line from Toledo, Ohio, to East St. Louis, Illinois,—which was known as the Main Line of the system,—at Delphos, Ohio. The chief repair shops of the entire system were located at Delphos.

The Bass Foundry and Machine Works was the furnisher of large amounts of supplies and repair materials, to the company, prior to the appointment of E. E. Dwight as Receiver.

On July 17, 1884, the Bass Foundry and Machine Works, appellee herein, filed, in the suit to foreclose the first mortgage of the Toledo, Delphos and Burlington Railroad Company,—which mortgage covered the line of railroad of The Toledo, Cincinnati and St. Louis Railroad Company from Toledo, Ohio, to Kokomo, Indiana,—its claim for supplies and materials furnished to the T., C. & St. L. R. R. Co., *prior to the appointment of E. E. Dwight as Receiver under the creditor's bill brought by Grenville D. Braman.*

This claim appears in full in the record.

(Record pp. 48 to 59.)

This claim was referred to the Master, and the Master filed report thereon, which report shows that during the *six months* next prior to the appointment of a Receiver under the creditor's bill of Braman, to-wit: From February 1, 1883, to August 1, 1883, the T., C. & St. L. R. R. Co. paid to Bass Foundry and Machine Works $18,382.58; while during said six months the Railroad Company received supplies and materials from Bass Foundry and Machine Works to the amount of only $15,160.19. The Master, however, found that upon the entire account of Bass Foundry and Machine Works extending from August, 1, 1883, *back to July 1, 1882*, there was a balance unpaid of $8,521.58.

(Record pp. 59, 60.)

It seems from the record that on January 7, 1886, Bass Foundry and Machine Works filed an intervening petition, again asking payment of this balance of account accrued *prior* to the appointment of Dwight as Receiver under the creditor's bill brought by Braman. This intervening petition shows on its face that the *first* petition for payment of this same claim was filed in the suit brought by Braman as an unsecured creditor.

(Record pp. 61 to 65.)

This claim of Bass Foundry and Machine Works for supplies and materials sold by it to the T., C. & St. L. R. R. Co. *prior to the appointment of any Receiver*, and the Master's report thereon, and, in fact, all the parts of the record herein above cited, *have no connection with, or relevancy to, the decree here appealed from.* The Circuit Court long ago held and decreed that there was no diversion of earnings in this case, either to payment of interest or to betterment of the mortgaged estate, and that there is, therefore, nothing in this case to make what is known in the Seventh Circuit as the "six months' rule" applicable to it. This Court in *Kneeland* v. *American Loan and Trust Company*, 136 U. S., 96, has settled that question. That the decree here appealed from has reference only and solely to supplies and material furnished by Bass Foundry and Machine Works *during the two receiverships of E. E. Dwight and W. J. Craig*, is conclusively proved by the decree itself.

(Record p. 68.)

On January 7, 1886, Bass Foundry and Machine Works filed its claim and intervening petition for payment for supplies and material furnished to E. E. Dwight, Receiver under the creditor's bill, and to W. J. Craig, Receiver under the foreclosure suit.

By mistake,—arising from the fact that Bass Foundry and Machine Works filed *two* intervening petitions on the same day,—one for their claim accrued *prior* to the first receivership, and the other for their claim accrued *during the two receiverships*,—this intervening petition for payment of the claim accrued during the two receiverships is *entirely omitted form the record.* To supply this omission the clerk has furnished me with a certified copy of the omitted intervening petition which I have had printed as an appendix to this brief, for the purpose of avoiding the necessity of applying for a certiorari to complete the record. (See Appendix.)

This claim and intervening petition was referred under a general order referring all claims and intervening petitions filed in the cause to William P. Fishback, Master. (Record, p. 61.)

Under the general order of reference the Master was required to separate his findings into three periods, viz: 1. August 1, 1883 to December 1, 1883,—which covered the Dwight receivership: 2. December 1, 1883 to August 1, 1884,—which covered the period during which the *entire system* was operated by Craig as Receiver of all of the railroad and property owned by the Toledo, Cincinnati and St. Louis Railroad Company: 3. August 1, 1884 to April 18, 1885, at which date the account was closed,—this third period being part of the period during which the main line, extending from Toledo, Ohio, to East St. Louis, Illinois, was operated by Craig as Receiver, after the Ohio divisions had been sold on foreclosure decrees and delivered to the purchasers.

On November 12, 1885, foreclosure decrees and orders of sale were entered in the two foreclosure suits, covering the main line, from Toledo, Ohio, to East St.

Louis, Illinois. On December 30, 1885, Sylvester H. Kneeland, appellant in this cause, purchased the entire main line at the foreclosure sales of the two divisions thereof.

On March 12, 1886, the Master filed his report in which he finds the debit and credit sides of the account as follows, viz:

Debit.	October 1, 1883, to December 1, 1883, —1st period,—	$ 1695.01
	December 1, 1883, to August 1, 1884, —2d period,—	10085.76
	August 1, 1884, to April 18, 1885,— 3d period,—	1085.14
	Total,	$12865.91
Credits during 1st period,	None.	
" " 2d period	$ 2291.63	
" " 3d period	2565.06	
		4856.69
	Balance due,	$ 8009.22

(Record, p. 65.)

On March 30, 1886, Sylvester H. Kneeland, as purchaser of the Main Line at the foreclosure sales thereof, and as Trustee and representative of Main Line First Mortgage bondholders, filed exceptions to the Master's report. (Record pp. 66, 67, 68.)

On July 17, 1884, Hon. Jacob D. Cox, of Ohio,—who was appointed Special Master by concurrent orders of the Circuit Courts of the Sixth and Seventh Circuits —reported to said Courts a basis of distribution of liabilities as between the several divisions of the Toledo, Cincinnati and St. Louis Railroad. This basis of distribution was adopted by the Court on June 18, 1885,

and was again confirmed by the Court on February 8, 1886. These facts appear in the printed record in the cause of "Sylvester H. Kneeland v. The American Loan and Trust Company, et. al."—No. 252, on the Docket of this Court for October Term, 1889,—which cause was heard and determined by this Court in April and May 1890.

(Record in Cause No. 252, Oct. Term, 1889, pp. 214, 435, 436, 537, 542, 543.)

The distribution so adopted was as follows, viz:

Divisions.	Per Cent.
Toledo Terminal,.....	0.40
Toledo Division,.....	23.79
Dayton Division,.....	12.98
Dayton & South Eastern Division,.....	32.67
Iron Railroad Division,.....	1.98
Cincinnati Division, ...	1.36
Cincinnati Northern Division, ...	4.16
St. Louis Division,.....	22.66
	100.00

This basis of distribution of liabilities has been regarded as the settled and established law of this entire litigation. There is surely no reason for a departure from this fixed basis, in adjusting and distributing the claim of Bass Foundry and Machine Works. It will be observed that this basis of distribution of liabilities only applies up to *August 1, 1884*,—the date at which the Ohio divisions passed out of the possession of Receiver Craig, and into the possession of their purchasers at foreclosure sales.

After August 1, 1884, all liabilities incurred by the Receiver are charged against the Main Line pur-

chased by Kneeland. This Court having recently decided that the Toledo Terminals were covered by the decree foreclosing the first mortgage of the Toledo, Delphos and Burlington Railroad Company, and, consequently, are included in Kneeland's purchase of the Main Line, the percentage of claims, finally allowed against the receivership, that accrued prior to August 1, 1884, justly chargeable to the divisions purchased by Kneeland is,—as shown by the basis above set forth, as follows, viz:

Toledo Terminal Division,.....	0.40
Toledo Division,.....	23.79
St. Louis Division,.....	22.66
Total chargeable to Kneeland's purchase,	46.85

By his exceptions to the Master's report in favor of Bass Foundry and Machine Works, appellant Kneeland expressly presented to the Circuit Court three points in each of which he claimed the Master's report to be erroneous, viz:

1. That no allowance should be made for supplies and repairs furnished to the *Dwight receivership*,—August 1, 1883 to December 1, 1883.

2. That the Master should have distributed to the various divisions, in accordance with the established basis of percentages the amount found due for supplies and repairs furnished to the Craig receivership during the period from December 1, 1883 to August 1, 1884, instead of finding and reporting the entire amount as chargeable against the fund in the registry of the Court arising from the sale of the divisions purchased by Kneeland, and known as the Main Line.

3. That the Master in his report erroneously ap-

plied $1479.92—paid by Craig as Receiver of the Main Line after August 1, 1884, over and above all supplies purchased by him after August 1, 1884,—as a credit upon the gross amount found due for supplies and repairs furnished for the entire system during the period from December 1, 1883 to August 1, 1884, whereas the Master should have applied said $1479.92 as a credit upon the 46.85 per cent. of said gross amount, properly chargeable against the divisions purchased by Kneeland and constituting the main line.

On November 20, 1886, the Court overruled the exceptions filed by Kneeland, confirmed the Master's report, rendered decree in favor of Bass Foundry and Machine Works for the full sum of $8009.22 and directed the Clerk to pay said sum out of the funds in the registry of the Court in said cause. (Record p. 68.)

On December 18, 1886, Kneeland prayed an appeal from the decree in favor of Bass Foundry and Machine Works. The appeal was granted, and Kneeland gave supersedeas bond which was duly approved.

(Record p. 69.)

That Sylvester H. Kneeland has the right to prosecute this appeal is not a debatable question. This Court has settled that question in Kneeland's favor.

Kneeland v. *American Loan and Trust Company*, 136 U. S., pp. 91 to 95.

ASSIGNMENT OF ERRORS.

1. *The Circuit Court erred in overruling the first, second and third exceptions filed by Kneeland.*

2. *The Circuit Court erred in allowing and decreeing payment of $1695.01 found due to Bass Foundry and Machine Works for supplies and repairs furnished*

to E. E. Dwight, Receiver of the Toledo, Cincinnati and St. Louis Railroad Company, under a creditor's bill brought and prosecuted by one Braman.

3. *The Circuit Court erred in refusing to distribute the amount found due to appellee for the period from December 1, 1883 to August 1, 1884, among the several divisions, upon the established percentage basis, so that each division should bear its equitable share of the burdens of the receivership of the entire system: And the Court also erred in refusing to credit the portion of appellee's claim equitably due from the divisions purchased by Kneeland, with the surplus paid to appellee by said divisions, after August 1, 1884, over and above full payment for all supplies and repairs furnished to Receiver Craig by appellee after said last named date.*

ARGUMENT.

I.

THE CIRCUIT COURT ERRED IN DECREEING PAYMENT,—IN PREFERENCE TO PAYMENT OF FIRST MORTGAGE BONDS,—OF AN INDEBTEDNESS OF $1695.01 INCURRED TO APPELLEE BY E. E. DWIGHT, RECEIVER OF THE TOLEDO, CINCINNATI AND ST. LOUIS RAILROAD COMPANY, FROM AUGUST 1, 1883, TO DECEMBER 1, 1883, UNDER THE CREDITOR'S BILL OF BRAMAN.

No extended argument is necessary in support of this proposition. As to Kneeland and the bondholders represented by him, the situation is precisely the same that it would have been if the company had remained in possession of the road during the four months from August 1, 1883, to December 1, 1883. Dwight was not their Receiver. His possession was not their possession. Neither was it at their instance nor for their

benefit. So far as Kneeland and the bondholders are concerned, the company did,—in contemplation of law as affecting the first and prior lien of their bonds,—remain in possession up to December 1, 1883.

The Bass Foundry and Machine Works was bound, at its peril, to know the legal situation. It was not bound to sell to the company, or to Dwight as Receiver under an unsecured creditor's bill. When it sold supplies and materials to the Dwight receivership it must be assumed to have sold on the faith of the *personal responsibility of that unsecured creditor's receivership*, and not in expectation of subsequently displacing the priority of the mortgage liens. It was bound to know, as matter of law, that all that the Dwight receivership,—being instituted under an unsecured creditor's bill,—could ever be, or become, entitled to, would be the net or surplus earnings of *that receivership*, after payment of all operating expenses and fixed charges. In selling to the Dwight receivership appellee took the chances whether there would, or would not, be any net earnings. The chance having gone against it, appellee has no legal or equitable right to ask payment of its claim against the unsecured creditor's receivership, in preference to the payment of first mortgage bonds.

This Court has very clearly and explicitly settled this question against appellee in a recent decision rendered in this same general litigation.

In that decision the terse and emphatic statements of Mr. Justice Brewer leave no room for doubt or question.

Kneeland v. *American Loan and Trust Company*, 136 U. S. pp. 96 to 100.

The decision in that case governs and completely

covers this case as to the point now under consideration. It is impossible to distinguish, in principle, between a debt incurred for the use of a car, and a debt incurred for a casting or piece of metal with which to repair that car. They are debts of precisely the same class and character, and must be governed by the same principles of law.

Appellant asks that the decree be reversed for error in decreeing payment,—in preference to payment of first mortgage bonds,—of $1695.01 incurred to appellee by E. E. Dwight, Receiver under the creditor's bill of Braman.

II.

THE CIRCUIT COURT ERRED IN REFUSING TO DISTRIBUTE THE AMOUNT FOUND DUE TO APPELLEE FOR THE PERIOD FROM DECEMBER 1, 1883, TO AUGUST 1, 1884, AMONG THE SEVERAL DIVISIONS, UPON THE ESTABLISHED PERCENTAGE BASIS, SO THAT EACH DIVISION SHOULD BEAR ITS EQUITABLE SHARE OF THE BURDENS OF THE RECEIVERSHIP OF THE ENTIRE SYSTEM.

It is a recognized and established fact in this litigation over the property of the Toledo, Cincinnati and St. Louis Railroad Company, that W. J. Craig was Receiver of the *entire system*—including all of the Ohio divisions —from December 1, 1883, to August 1, 1884; and that during that period he operated the entire system as a unit, using the entire equipment interchangeably on the various divisions, and treating the property as a single system. The testimony in the record in the case of *Kneeland* v. *American Loan and Trust Company*, *supra*, established this fact beyond any controversy. That same record established the further fact that in July, 1884, Special Master Jacob D. Cox reported to the

Circuit Courts of the Sixth and Seventh Circuits a percentage basis of distribution of liabilities among the various divisions, and that the Courts adopted and confirmed that basis of distribution. This scheme of distribution,—as I understand it,—was founded upon a mileage basis. By this basis of distribution the property purchased at foreclosure sales by Kneeland was required to pay the following percentages of all claims held and decreed prior in lien to first mortgage bonds, viz:

Toledo Terminal Division	0.40
Toledo Division	23.79
St. Louis Division	22.66
Making a total percentage of	46.85

This Court in its decision in *Kneeland* v. *American Loan and Trust Company, supra*, and again in *Kneeland* v. *American Loan and Trust Company and E. B. Phillips, Trustee, and Kneeland* v. *George William Ballou, Trustee, et al.*,—Nos. 1539 and 1540, October Term 1890, recently decided, affirmed and approved this basis of distribution.

No good reason can be given for refusing to apply this basis of distribution to the claim of appellee, —in so far as that claim accrued during the period that Craig as Receiver operated the *entire system* as a unit, viz: from December 1, 1883 to August 1, 1884. It would be manifestly unjust and inequitable to compel Kneeland's divisions to pay *all* of appellee's claim accrued during that period, and let the Ohio divisions go free. It would be equally unjust and inequitable to compel Kneeland to pay all of appellee's claim, *and compel him to look to the Ohio divisions to reimburse him to the extent of their share of the claim on the fixed basis of distribution.*

After such forced payment of the entire claim Kneeland would have no legal right to enforce contribution by the Ohio divisions. Even if he had such right it would, nevertheless, be inequitable to compel him, at his own risk and expense, to become guarantor for the Ohio divisions, and collecting agent for Bass Foundry and Machine Works.

The Master found the total amount of appellee's claim, accrued between December 1, 1883 and August 1, 1884, to be..... $10085.76
And that there had been paid on this account.. 2291.63

Leaving total balance due appellee for this period..... $7794.13

(Record p. 65.)

Upon the basis of distribution adopted by the Circuit Courts and approved by this Court, as above shown, Kneeland's divisions owe 46.85 per cent. of this amount; 46.85 per cent. of $7894.13 is $3651.55 which is the entire amount that ought in equity to be charged against Kneeland's divisions in favor of appellee, for the period from December 1, 1883 to August 1, 1884. Kneeland asks that the decree be reversed for error of the Circuit Court in refusing to distribute the amount found due, for this period, among the several divisions, according to the established basis of distribution.

III.

THE CIRCUIT COURT ERRED IN REFUSING TO CREDIT THE PORTION OF APPELLEE'S CLAIM EQUITABLY DUE FROM THE DIVISIONS PURCHASED BY KNEELAND, WITH THE SURPLUS PAID TO APPELLEE BY SAID DIVISIONS AFTER AUGUST 1,

1884, OVER AND ABOVE FULL PAYMENT FOR ALL SUPPLIES AND REPAIRS FURNISHED TO RECEIVER CRAIG BY APPELLEE AFTER SAID LAST NAMED DATE.

It is the established law of this T. C. & St. L. R. R. Co. litigation, that the divisions of the road extending from Toledo, Ohio to East St. Louis, Illinois, —the divisions purchased by Kneeland at foreclosure sales,—are to pay ALL of each debt incurred by the Craig receivership *after* August 1, 1884,—if the debt is decreed to be prior in lien to first mortgage bonds,—because the divisions purchased by Kneeland were the only parts of the entire system that remained in the possession of the Receiver after August 1, 1884. The decisions of this Court in *Kneeland* v. *American Loan and Trust Company*, *Kneeland* v. *George William Ballou, et. al.* and *Kneeland* v. *American Loan and Trust Company, and E. B. Phillips, Trustee*, above referred to, were all rendered upon this theory.

This being the fact it follows, of necessity, that *Kneeland's divisions are, in law and equity, entitled to credit for all payments made to appellee by the Craig receivership after August 1, 1884.* The Ohio divisions are not entitled to share with the Kneeland divisions in credits on appellee's account procured by payments made by the Craig receivership after August 1, 1884.

The Ohio divisions have no interest or share in those payments. They were made by the Receiver of the Kneeland divisions, out of the property of the Kneeland divisions.

It certainly cannot be assumed that the purchasers of the Ohio divisions, after they took possession of the lines of railroad purchased by them, gave to Craig as

Receiver of the Kneeland divisions only, scrap and material with which he made to appellee payments on account after August 1, 1884.

There are no facts in the record,—or out of the record for that matter,—tending to support an assumption so unreasonable and unnatural. The purchasers of the Ohio divisions very surely did *not* give to Receiver Craig a pound of scrap, or any other material belonging to their divisions when they purchased and took possession of them. It seems clear, beyond question, that the Kneeland divisions are entitled to full credit for all payments made to appellee by the Craig receivership after August 1, 1884. By the decree appealed from this plain right is denied to the Kneeland divisions.

The Master's report,—affirmed by the decree appealed from,—shows that the Craig receivership purchased from appellee, after August 1, 1884, supplies to the amount of only $1085.14, while the Craig receivership paid to appellee, after August 1, 1884, $2565.06.

(Record p. 65.)

It thus appears that the Craig receivership, after August 1, 1884, paid to appellee $1479.92, over and above full payment for all supplies purchased from appellee after August 1, 1884.

This $1479.92 ought in equity to be applied as *a credit upon that portion of appellee's claim accrued between December 1, 1883, and August 1, 1884, which is due from Kneeland's divisions, upon the fixed basis of distribution of liabilities.*

But under the decree the Ohio divisions are allowed to share in this payment, and are given the benefit of over one-half of this $1479.92, every cent of

which was paid by the Kneeland divisions, out of their own property. Can a decree which brings about such a result be right and equitable?

It has already been shown,—*supra*, p. 13,—that the portion of appellee's claim, accrued between December 1, 1883, and August 1, 1884, which is properly chargeable against the Kneeland divisions upon the established basis of distribution, is $3651.55.

This $1479.92 of surplus payment made by the receivership of the Kneeland divisions after August 1, 1884, ought in equity to be credited as part payment of the $3651.55 due from the Kneeland divisions for the period from December 1, 1883, to August 1, 1884.

Subtracting $1479.92 from $3651.55 leaves $2171.63, which is the total amount justly and equitably due to Bass Foundry and Machine Works from the divisions of the Toledo, Cincinnati and St. Louis Railroad purchased by Sylvester H. Kneeland.

Appellant Kneeland asks this Court to so find and decree. It is perfectly evident that there never has been a time at which Kneeland could have released himself from all liability to appellee by paying, or tendering, the $2171.63, above shown to be the total amount justly and equitably due to appellee from the divisions of the railroad purchased by him.

By his first, second and third exceptions to the Master's report, Kneeland pressed the points hereinabove discussed upon the attention of the Circuit Court, but without avail. The Court rendered decree for the total amount found due by the Master,—including indebtedness incurred by E. E. Dwight as Receiver under the creditor's suit brought by Braman,—and refused to make distribution among the several divisions justly liable to

appellee. Under these circumstances Kneeland had no alternative but to appeal from the entire decree. It would, therefore, seem harsh and unjust to compel him to pay any interest on the amount found by this Court to be due from his divisions of the railroad to appellee.

Appellant, therefore, prays this Court that the decree of the Circuit Court be reversed; that the just and true amount, if any, due to appellee from the divisions of the railroad purchased by him, may be fixed and determined; and that no interest be allowed to appellee upon the amount, if any, found due from appellant's divisions of the railroad.

The former decisions of this Court in this same general litigation,—which decisions are herein above cited,—and the form of the decree appealed from, render it unnecessary to consider or discuss the points presented by appellant's fourth exception to the Master's report.

Respectfully submitted,

JOHN M. BUTLER,
Of Counsel for Appellant.

Indianapolis, Ind., April 17, 1891.

APPENDIX.

"United States of America District of Indiana.	U. S. Circuit Court District of Indiana.
Central Trust Company of New York. vs. Toledo, Cincinnati and St. Louis Railroad Company and Toledo, Delphos and Burlington Railroad Company.	Consolidated Causes.

"Comes now the Petitioner Bass Foundry and Machine Works a corporation organized under the laws of the State of Indiana and presents this its petition and claim in the above causes and says that the Receivers of said Court in charge of and operating by the direction and orders of said Court the Toledo, Cincinnati and St. Louis Railroad are indebted to petitioner for goods, wares and merchandise sold and delivered by petitioner to said Receivers in the sum of $8009.22 as follows:

E. E. Dwight Receiver,	$1.557.89.
W. J. Craig "	6.451.33.
Total,	8009.22.

an itemized account of which is hereto attached and made a part hereof, which said sum petitioner asks may be allowed and paid by this Court out of any funds in its hands properly applicable thereto.

COOMBS, BELL & MORRIS,
Attorneys for claimant."

ESTABLISHED 1853.
INCORPORATED 1873. CAPITAL $500,000.

Fort Wayne, Ind., Jan'y 2d, 1886.

T., C. & St. L. R'y.,

E. E. Dwight, Receiver,

J. H. BASS, *Pres't.*
J. I. WHITE, *Sec'y.*
R. J FISHER, *Treas.*

BOUGHT OF

BASS FOUNDRY AND MACHINE WORKS,

MANUFACTURERS OF

Steam Engines and Boilers, Mill Gearing, Car Wheels, &c.

IRON AND BRASS CASTINGS.

1883.									
October	1.	For 1 lot of Castings,	12290	lbs.,	2.12½	.....	$	260	16
"	1.	" "	530	"	"	.....		11	26
"	1.	" "	171	"	"	.....		3	63
"	2.	" "	35	"	"	.....			74
"	3.	" "	90	"	"	.....		1	91
"	8.	" "	750	"	"	.....		15	94
"	8.	" 1 5½ in. Driving Axle,	588	lbs.,	5½	cts...		26	46
"	15.	" 1 lot of Castings,	4950	lbs.,	2 12½	.....		100	94
"	17.	" "	1468	"	"	.....		31	19
"	20.	" "	3590	"	"	.....		76	29
"	23.	" "	440	"	"	.....		9	35
"	24.	" "	3444	"	"	.....		73	18
"	24.	" "	390	"	"	.....		8	29
"	27.	" "	1762	"	"	.....		37	45
November	1.	" "	1030	"	"	.....		21	89
"	1.	" "	1460	"	"	.....		31	03
"	1.	" 2 Stoves,	710	"	"	.....		15	09
"	1.	" Fitting 2 Stoves.....						2	00
"	7.	" 1 lot of Castings, 438 lbs., 2.12½ cts.....						9	31
"	9.	" 12 No. 4 and 6 No. 3 Stoves, 6070 lbs. 2½c.						128	98
"	9.	" 161 Joints of Pipe, 20 cts.....						20	20
"	9.	" 18 Elbows, 20 cts.....						3	60
"	13.	" 8 No. 4 and 3 No. Stoves, 3720 lbs., 2½c.						79	05
"	13.	" 61 Joints of Pipe, 20 cts.....						12	20
"	13.	" 11 Elbows, 20 cts.....						2	20
"	13.	" Fitting 11 Stoves,.....						11	00
"	13.	" Fitting 18 Stoves, November 9, 1883.....						18	00
"	13.	" 1 lot of Castings, 1390 lbs., 2⅛ cts.....						29	54
"	23.	" "	1810	"	"	.....		38	46
"	17.	" 7 No. 3 Stoves, 2660 lbs., 2⅛ cts					$	56	53
"	17.	" 2 No. 4 " 620	"	"	....			13	18
"	17.	" 12 Joints Pipe, 20 cts..... ..						2	40

Nov'mbr.	17.	For 2 Elbows, 20 cts	40
"	17.	" 1 lot of Castings, 1460 lbs., 2⅛ cts	32 03
"	17.	" 1 " " 8440 " "	179 35
"	17.	" Fitting 9 Stoves	9 00
"	20.	" 3 No. 4 Stoves, 860 lbs., 2⅛ cts	18 28
"	20.	" 20 Joints Pipe, 20 cts	4 00
"	20.	" 4 Elbows, 20 cts	80
"	20.	" 2 Pieces 4x4 Zinc, 22 lbs, 15 cts	3 30
"	20.	" Fitting 2 Stoves	3 00
"	22.	" 1 No. 4 Stove, 310 lbs., 2⅛ cts	6 59
"	22.	" Fitting Same	1 00
"	9.	" 1 lot of Castings, 2292 lbs., 2⅛ cts	48 71
"	27.	" 12 Stoves 4140 lbs., 2⅛ cts	87 98
"	27.	" Fitting above	12 00
"	20.	" 4 No. 3 Stoves, 1520 lbs., 2⅜ cts	32 30
"	20.	" Fitting Same	4 00
"	20.	" 1 No. 3 and 1 No. 4 Stove, 690 lbs., 2⅛ cts.	14 66
"	20.	" Fitting Same	2 00
"	28.	" 10 Stoves, 3490 lbs., 2⅛ cts	74 16
"	28.	" Fitting Same	10 00
December	3.	" 1 lot of Castings, 4360 lbs., 2⅛ cts	92 65
"	6.	" 1 " " 2520 " "	54 19
"	6.	" 1 " " 5970 " "	126 86
"	11.	" 1 " " 13285 " "	282 31
"	11.	" 1 " " 7590 " "	161 29
"	11.	" 2 No. 4 Stoves, 620 lbs., 2⅛ cts	13 18
"	11.	" 6 Joints Pipe, 20 cts	1 20
"	11.	" 1 Elbow	20
"	11.	" Fitting Same	2 00
"	13.	" 1 lot of Castings, 6430 lbs., 2⅛ cts	136 64
"	13.	" 1 " " 5607 " "	119 15
"	17.	" 1 " " 4010 " "	85 21
"	17.	" 1 " " 10107 " "	214 77
"	17.	" 1 " " 4380 " "	93 08
"	21.	" 1 " " 8810 " "	187 21
"	21.	" 1 " " 7880 " "	164 45
"	21.	" 2 No. 4 Stoves, 620 " "	13 18
"	21.	" Fitting Same	2 00
"	26.	" 1 lot of Castings, 3810 lbs., 2⅛ cts	80 96
"	26.	" 1 " " 720 " "	15 30
"	29.	" 1 " " 7490 " "	159 16
"	29.	" 1 " " 1830 " "	38 89
"	29.	" 1 " " 502 " "	10 67
December	31.	" 1 lot of Castings, 501 lbs, 2⅛ cts	10 65
"	31.	" " " 2710 " "	57 50
"	24.	" " " 6810 " "	144 71
"	29.	" " " 3540 " "	75 23
"	31.	" " " 1340 " "	28 48

1884.			
January	4.	For 1 lot of Castings, 5845 lbs., 2⅛ cts.....	124 21
"	4.	" " " 1020 " "	21 68
"	4.	" " " 7010 " "	148 96
"	7.	" " " 6760 " "	143 65
"	7.	" " " 549 " "	11 67
"	7.	" " " 2910 " "	61 84
"	7.	" " " 7340 " "	155 98
"	7.	" Express charges on 549 lbs. Castings.....	2 65
"	9.	" 1 lot of Castings, 2280 lbs., 2⅛ cts.....	48 45
"	9.	" " " 2680 " "	56 95
"	9.	" " " 5610 " "	119 21
"	11.	" " " 562 " "	11 94
"	11.	" Express charges on above.....	2 70
"	12.	" 1 lot of Castings, 11680 lbs., 2⅛ cts.....	248 20
"	12.	" " " 3095 " "	65 77
"	12.	" " " 5194 " "	110 38
"	12.	" 1 No. 3 Stove, 390 lbs., 2⅛ cts.....	8 29
"	12.	" Fitting same.....	1 00
"	16.	" 1 lot of Castings, 7132 lbs., 2⅛ cts.....	149 77
"	16.	" 1 " " 1390 " "	29 19
"	16.	" 1 " " 2243 " "	47 10
"	18.	" 1 " " 140 " 2.10	2 94
"	18.	" Express on same.....	65
"	19.	For 1 lot of Castings, 1360 lbs., 2⅛ cts.....	28 56
"	19.	" 1 " " 1150 " 2.10	24 15
"	19.	" 1 " " 10110 " "	212 31
"	23.	" 1 " " 340 " 2⅛ cts.....	7 14
"	23.	" 1 " " 1410 " 2.10.....	29 61
"	23.	" 1 " " 11688 " "	245 45
"	23.	" 1 No. 4 Stove Grate, 8 " "	17
"	28.	" 1 lot of Castings, 610 " "	12 81
"	28.	" 1 " " 10798 " "	226 76
February	1.	" 1 " " 220 " "	18 69
"	1.	" 1 " " 10222 " "	214 66
"	1.	" 1 " " 220 " "	4 62
"	5.	" 1 " " 3490 " "	73 20
"	5.	" 1 " " 6792 " "	142 63
"	6.	" 1 " " 368 " "	7 63
"	6.	" Express Charges on above.....	1 75
"	9.	" 1 lot of Castings, 384 lbs., 2.10.....	8 06
"	9.	" 1 " " 9210 " "	193 41
"	9.	" 1 " " 160 " "	3 36
"	14.	" 1 " " 692 " "	14 53
"	14.	" 1 " " 10783 " "	226 44
"	16.	" 4 Driving Axles, 1410 " 4¼ cts.....	59 93
"	18.	" 1 lot of Castings, 80 " 2.10.....	1 68
"	18.	" 1 " " 6917 " "	145 26

February	18.	" 4 Caboose Stoves, 860 lbs., 2.10	18 06
"	18.	" Fitting Same	4 00
"	20.	For 1 lot of Castings, 3706 lbs., 2.10	77 83
"	25.	" 1 " " 8310 " "	174 30
"	27.	" 3 Castings, 400 lbs., 2.10	8 40
"	27.	" Express Charges	2 00
"	28.	" 3 Castings, 399 lbs., 2.10	8 38
"	28.	" Express Charges	2 00
"	29.	" 1 lot of Castings, 580 lbs., 2.10	12 18
"	29.	" 1 " " 1510 " "	31 71
"	29.	" 1 " " 6110 " "	128 31
March	4.	" 1 " " 401 " "	8 42
"	4.	" 1 " " 4790 " "	100 59
"	4.	" 1 " " 8410 " "	176 61
"	7.	" 1 " " 576 " "	12 10
"	7.	" 1 " " 12940 " "	271 74
"	7.	" 1 " " 9418 " "	197 78
"	10.	" 1 " " 189 " "	3 97
"	10.	" 1 " " 5110 " "	107 31
"	10.	" 1 " " 6976 " "	146 50
"	10.	" 9 26 in. Car Wheels, 6.25	56 25
"	10.	" 9 28 in. Tender " 8.25	74 25
"	13.	" 3 Castings, 191 lbs., 2.10	4 01
"	13.	" 2 " 560 " "	11 76
"	13.	" 1 lot of Castings, 6110 lbs., 2.10	128 31
"	13.	" 1 " " 10121 " "	212 54
"	13.	" 14 26 in. Car Wheels, 6.25	87 50
"	13.	" 8 28 in. Tender " 8.25	66 00
"	15.	" 12 26 in. Car " 6.25	75 00
"	15.	" 12 28 in. " " 8.25	99 00
"	15.	" 1 lot of Castings, 6978 lbs., 2.10	146 54
"	15.	" 1 " " 1510 " "	31 71
"	19.	" 1 " " 1110 " "	23 31
"	19.	" 1 " " 8223 " "	172 68
"	19.	" 5 28 in. Tender Wheels, 8.25	41 25
"	24.	" 1 lot of Castings, 9973 lbs., 2.10	209 43
"	24.	" 1 " " 478 " "	10 04
"	26.	" 8 26 in. Car Wheels, 6.50	52 00
"	26.	" 1 lot of Castings, 2710 lbs., 2.10	56 91
"	26.	" 1 " " 2360 " "	49 56
"	26.	" 1 " " 155 " "	3 26
"	26.	" Express Charges	80
April	2.	" 1 lot of Castings, 11140 lbs., 2.10	233 94
"	2.	" 1 " " 6673 " "	140 13
"	2.	" 2 28 in. Tender Wheels, 8.25	16 50
"	8.	" 1 lot of Castings, 338 lbs., 2.10	7 10
"	9.	" 1 " " 6170 " "	129 57
"	9.	" 1 " " 2876 " "	60 40

April	9.	For 7 26 in. Car Wheels, 6.50	45 50
"	10.	" Expense on Pattern	80
"	15.	" 1 lot of Castings, 340 " "	7 14
"	15.	" 1 " " 7333 " "	73 33
"	22.	" 1 " " 390 " "	8 19
"	22.	" 1 " " 2410 " "	50 61
"	22.	" 10 Car Axles, 2139 lbs., 2.40	51 34
"	22.	" 20 26 in. Car Wheels, 6.25	125 00
"	22.	" Pressing in 20 26 in. Whls. to Axles, 25 cts.	5 00
"	22.	" Bering and Fitting 10 pair Wheels and Axles, 1.75	17 50
"	28.	" 1 lot of Castings, 3330 lbs., 2.10	69 93
May	9.	" 1 " " 3672 " "	77 12
"	17.	" 1 lot of Castings 570 lbs. 2.10	11 97
Sept.	18.	" 1 " " 1638 " "	34 40
"	18.	" 12 26 in. Car Wheels 6.50	84 50
"	22.	" 1 lot of Castings 902 lbs. 2.10	18 94
"	25.	" 1 " " 1510 " "	31 71
"	27.	" 1 " " 910 " "	19 11
"	27.	" 17 26 in. Car Wheels 6.50	110 50
October	4.	" 1 lot of Castings 910 lbs. 2.10	19 11
"	7.	" 1 " " 230 " "	4 83
"	7.	" 1 Driving Axle 410 lbs. 5 cts	20 50
"	9.	" 14 28 in. Engine Wheels 8.25	115 50
"	9.	" 1 lot of Castings 660 lbs. 2.10	13 86
"	15.	" 6 28 in. Engine Wheels 8 25	49 50
"	15.	" 1 lot of Castings 440 lbs. 2.10	9 24
"	22.	" 1 " " 1930 " "	40 53
"	24.	" 1 " " 3260 " "	68 46
"	28.	" 1 " " 2520 " "	52 92
November	1.	" 1 " " 1620 " "	34 02
"	5.	" 1 " " 1260 " "	26 46
"	10.	" 1 " " 1598 " "	33 56
"	13.	" 1 " " 590 " "	12 39
"	26.	" 1 " " 792 " "	16 63
"	28.	" Express Charges on Pattern	25
1885.			
March	9.	" 1 lot of Castings 4110 lbs. 2.10	86 31
"	18.	" Check for Freight on 4 Cars Scrap	56 69
"	26.	" 1 lot of Castings 3910 lbs. 2.10	82 11
April	17.	" 1 Casting 83 lbs. 2.10	1 74
"	18.	" 127 Castings 1970 lbs. 2.10	41 37
			11308 02

CR.

1884.			
Jan. 21.	By 111 Old Wheels 35021 lbs. 18c	281 41	
	" 108½ Old " 31834 " "	255 81	

Mar.	By 29000 lbs. Burings and Sheet Iron 40c. hd.....116 00				
	Less Frt. from Delphos to Cin. 30 80—		85	20	
	" 19310 lbs. Old Axles 23c.....		222	06	
	" 21554 " Cast Scrap 15c gross...		144	33	
	" 26496 " " " " " ...		177	43	
	" 108 Old Wheels 32242 lbs. 18c...		259	09	
	" 1670 lbs. Old Rails 15c..... 11 14				
	" 10050 lbs. Mix Scrap No. 1 19.00 95 47				
	" 8063 " " " No. 2 7.75.. 31 24				
	" 1435 " Boiler " 15c..... 10 67				
	" 810 " Sheet " 5c..... 2 02—		150	54	
	" 6030 " No. 1 Mort Scrap 19c.. 57 28				
	" 4000 " No. 2 " " 7.75.. 15 50				
	" 2050 " Old Rails 15c..... 15 37				
	" 12732 " Burnt Scrap 8.50..... 48 31—		136	46	
	" 68 Old Wheels 19998 lbs. 18c.... 160 09				
	" 109 " " 30929 " 18c.....248 54—		408	63	
	" 15549 lbs. Cast Scrap 15c.....104 12				
	" 16563 " Spring Steel 9c..... 66 55—		170	67	
Oct.	" 20395 " Cast Scraps 15c.....136 57				
	" 4985 " Mort " 17c..... 37 83				
	" 1720 " Old Rails 12c..... 6 21				
	" 1500 " Mixed Scraps 5c..... 3 35				
	186 96				
	Less Freight..... 17 22—		169	74	2461 37
					8846 65
	" 71 Old Wheels 20137 lbs. 16c...143 84				
	" 1803 Cast Scrap 15 cts..... 12 07				
	155 91				
	Less Freight..... 13 68—		142	23	
	" 75 Old Wheels 22178 lbs. 16 cts...158 41				
	Less Freight..... 13 44—		144	97	
	" 76 Old Wheels 21956 lbs 16 cts...156 83				
	Less Freight ..... 13 20—		143	63	
	" 19180 lbs. Mort Scraps 17 cts..... 145 56				
	" 3070 lbs. Mixed Scraps 5 cts..... 6 85				
	152 42				
	Less Freight..... 13 35—		139	06	
	" 34150 lbs Cast Scrap 18 cts.. .....307 35				
	" 15550 lbs Old Wheels 22.40.....155 50—		462	86	
	" 8806 lbs. Turnings 8 cts. net.... 35 20				
	" 4166 lbs. Sheet Iron 6 cts. net... 12 30				
	" 5250 lbs. Fire Scraps 12cts. net... 31 50—		79	00	

	By 33500 lbs. Mort Scraps 12 cts. net..			402 00	
1885.					
Mar.	" 28363 lbs. Cast Scraps 12 cts.....	151 95			
	" 25966 lbs. Old Wheels 14 cts.....	162 28			
	" 1204 lbs. Old Wheels 12 cts.....	6 45			
	" 21781 lbs. Old Wheels 14 cts.....	136 13	—456 81		
	" 26620 lbs. Mort Scraps 15 cts.....	178 26			
	" 520 lbs. Rail Splints 10 cts.....	2 32			
	" 590 lbs. Old Flues 5 cts.....	1 31			
	" 515 lbs. Cast Scrap 12 cts.....	2 76	—184 65		
	" Check Received of Geo. Hafer, Receiver, to apply on Dwight & Craig's account.....			240 12	2,395 32
					$6,451 33

RECAPITULATION.

Balance due from Dwight.....	$1,557 89
Balance due from Craig.....	6,451 33
Total due.....	$8,009 22

Add Interest.

STATE OF INDIANA, } ss
ALLEN COUNTY. }

Robertson J. Fisher being duly sworn on his oath says that he is the Treasurer of Bass Foundry and Machine Works, a corporation, and authorized to make this affidavit in its behalf; that the foregoing statement of account in favor of said corporation against E. E. Dwight and W. J. Craig, Receivers of the Toledo, Cincinnati & St. Louis Railway, is just, true and correct. That the goods and articles therein named were furnished, sold and delivered as therein stated by said Bass Foundry and Machine Works, at and for the prices in said account stated; that there remains due and unpaid on the account with said Dwight the sum of $1,557.89, and on the account against said Craig the sum of $6,451.33, making a total balance of $8009.22. R. J. FISHER.

Subscribed and sworn to before me this 4th day of January, 1886.

BAYLESS SWIFT,
Notary Public.

UNITED STATES OF AMERICA,
DISTRICT OF INDIANA. } ss.

I, Noble C. Butler, Clerk of the Circuit Court of the United States for the District of Indiana, do hereby certify that the above and foregoing is a full, true and complete transcript of a claim and intervening petition of Bass Foundry and Machine Works filed in cause No. 7706 in chancery, the file mark and indorsements on the back of said claim and intervening petition being in the words and figures following, to-wit;

"U. S. Circuit Court. Central Trust Company of New York vs. T. C. & St. L. R. R. Co., & T. D. & B. R. R. Co.—Claim of Bass Foundry & Machine Works against Receivers. Filed January 7, 1886, Noble C. Butler, Clerk."

I further hereby certify that in making up the record of appeal in the case of Sylvester H. Kneeland vs. the Bass Foundry & Machine Works, the above and foregoing claim and intervening petition was inadvertently omitted from the record: the omission having arisen from the fact that the Bass Foundry & Machine Works filed in this Court two claims and intervening petitions on the same day, to-wit, January 7, 1886, one of which said claims and intervening petitions appears on pages sixty-one to sixty-five of the printed record in the appeal of Sylvester H. Kneeland, Appellant, vs. Bass Foundry & Machine Works. In order to perfect the record in said appeal, I have caused a full, true and complete transcript of the omitted claim and intervening petition as fully as the same appears of record and on file in my office, to be made, and hereby certify that the above and foregoing is such full, true and complete transcript thereof.

Seal Circuit Court of the United States, District of Indiana.

Witness my hand and the seal of said Court, at Indianapolis, in said District, this 15th day of April, A.D., 1891.

NOBLE C. BUTLER, Clerk.

Office Supreme Court U. S.
FILED.
APR 27 1891
JAMES. H. McKENNEY,
CLERK.

Supreme Court of the United States.

SYLVESTER H. KNEELAND,
Appellant,
vs
THE BASS FOUNDRY AND MACHINE WORKS, *Appellee.*

No. 334.
October Term, 1890.

Appeal from the Circuit Court of the United States for the District of Indiana.

BRIEF IN BEHALF OF APPELLEE.

Sentinel Print. Fort Wayne. Ind.

Supreme Court of the United States.

SYLVESTER H. KNEELAND,
Appellant,
vs.
THE BASS FOUNDRY AND MACHINE WORKS, *Appellee.*

No. 334.
October Term, 1890.

Appeal from the Circuit Court of the United States for the District of Indiana.

BRIEF IN BEHALF OF APPELLEE.

Counsel for Appellee—doubtless because of some unexplained failure of communication with the clerk—did not learn of the time fixed for the submission of this cause until after it had been made; neither did they obtain any copy of Appellant's brief until yesterday—April 22, 1891.

Leave having been granted by the Court for Appellee to file a brief and time given therefor until Monday next, we beg leave to call the attention of the Court to the facts involved, which we think are not correctly stated in Appellant's brief, or are omitted entirely therefrom.

Appellee, as intervener, filed below three petitions with accompanying claims. (See Record, pp. 48 and 60, and also *especially appendix to Appellant's brief, where the Clerk has sup-*

plied the last petition and claim, which had been omitted by him from the record.)

We are not advised as to whether the practice in this Court, in cases like this, will permit this method of supplying a portion of the record at this stage of the case.

One of these claims, upon which the first two petitions were based, was for a balance for supplies furnished within six months next prior to the appointment of a receiver.

The other claim was for supplies furnished the *receivers* while in possession of and operating the railroad as officers of the Court. See appendix to Appellant's brief—where record is supplied as above stated—page 18 *et seq.*

The former two petitions and accompanying claims were referred to Wm. P. Fishback, Master. The amount thereof, $8,521.58, was agreed upon (Record p. 59), and J. M. Butler for the Bondholder's committee endorsed the claim: "Without admitting any lien for any supplies furnished prior to the receivership, I say O. K. J. M. Butler, for Bondholders committee." (See Record, p. 62, and Report of Master, p. 65.)

The latter petition and claim, being the one for supplies furnished the Receivers, were also referred to Fishback, Master. (Record p. 61.) The report of the Master on this claim will be found on page 65 of the record.

The Master found that there was due on the claim for supplies furnished prior to the receivership a balance of $8,521.58. (Record p. 60.)

He found that there was due for supplies furnished the receivers the sum of $8,009.22. (Record p. 65.)

Afterwards Appellant filed exceptions to both these reports. (Record pp. 65, 66, 67 and 68.)

Thereupon the Court made the following order, which is the one appealed from here. (Record p. 68) :

"In the matter of the intervening petition of The Bass Foundry and Machine Works, for supplies furnished Receivers Dwight and Craig."

"The above matter coming on for hearing upon the report of the Master, filed herein on the 12th day of March, 1886, and the exceptions thereto, filed March 30th, 1886, by Sylvester H. Kneeland, Trustee, &c , and the Court, being sufficiently advised, does now overrule said exceptions and approve and confirm said report."

"It is therefore considered and adjudged by the Court that there be allowed said Bass Foundry and Machine Works the said $8,009.22, *so found due for supplies furnished* said *Receivers*, and that Noble C. Butler, Clerk of this Court, be, and he is hereby, authorized and directed to pay the same to said Bass Foundry and Machine Works out of any funds in the registry of this Court in said cause."

"*It is further ordered that action upon so much of the claim of said Bass Foundry and Machine Works and exceptions thereto as relate to claims for supplies furnished before the appointment of any receiver for said defendant, be reserved for further action by this Court.*"

These numerous references to the record seem to be necessary because of the almost inextricable state of confusion in which appellant's brief, together with omissions from the record proper, afterwards supplied, appear to leave the real questions involved.

It will be seen from the foregoing references that the real and only matter before the Court herein is the allowance for supplies *furnished the receivers*. The other claim is reserved

for further action by the Court below. So far as appears from the record, no final action has been taken upon it; nor, so far as we know, or are informed, has such final action ever been had.

Counsel for appellant is therefore correct in the statement made in his brief, that the claim for supplies furnished prior to the receivership has "*no connection with, or relavancy to, the decree here appealed from.*" But we respectfully submit that he is in error in stating that the Circuit Court has disposed of this matter, and also "that the case of *Kneeland* v. *American Loan and Trust Co.*, 136 U. S., 96, disposes of it." That was a claim for the rental of rolling stock in a suit where the receivership was at the instance of a judgment creditor. The rolling stock was not included in the sale, but was returned to the interveners upon orders made before decree of sale. The only property sold was covered by a mortgage executed prior to any contract with the interveners relative to the rolling stock. The interveners held a lien on the rolling stock. They made no demand for possession nor rental of the receiver, but left the property in his hands. The Court made no order for the payment of rentals of the rolling stock and there were no surplus earnings by the receiver.

Here quite a different state of facts is presented. The claim allowed and ordered to be paid by the Court below was for supplies furnished to and used by the receivers while operating the railroad under the direction of the Court.

In Kneeland v. American Loan Co., *supra*, p. 98, the Court say: "A Court which appoints a receiver acquires, by virtue of that appointment, certain rights and assumes certain obligations, and the expenses which the Court creates in discharge of those obligations are burdens necessarily on the

property taken possession of, and this, irrespective of the question who may be the ultimate owner, or who may have the preferred lien, or who may invoke the receivership. So if, at the instance of any party rightfully entitled thereto, a court should appoint a receiver of property, and therefore under an obligation to the public of continued operation, it, in the administration of the receivership, may rightfully contract debts necessary for the operation of the road, either for labor, supplies, or rentals, and make such expenses a prior lien on on the property itself."

So we contend in this case:

1. The receivers were appointed at the instance of parties rightfully entitled thereto.

2. The property being a railroad, there was, therefore, an obligation to the public of continued operation.

3. The Court in the administration of the receivership, rightfully contracted this debt, which was for supplies necessary to the operation of the road.

4. The Court allowed the claim and made it a lien on the property itself, as it rightfully might.

The itemized account upon which the claim is based shows the character of the supplies furnished. (See appendix to Appellant's brief.)

It is not pretended that the supplies were not received; that they were not necessary for the continued operation of the railroad and so used; nor that the receivers were not duly authorized to contract therefor; nor that appellee has ever been paid for the same.

But it is contended by appellant that this allowance should have been distributed among the several constituent roads constituting the property of the Toledo, Cincinnati and

St. Louis Railroad Company, according to a basis adopted in other matters, and which was considered just and equitable as between the bondholders.

The appellee knows of no reason why this should be done, so far as it is concerned.

The first receiver, Dwight, was appointed upon the bill of Braman, a creditor, in a proceeding to which the Trustees of the bondholders were parties. This appointment was made by the Circuit Court of the United States for the District of Indiana, Judge Drummond presiding, and confirmed by ancillary proceedings in the Circuit Court for the District of Ohio, the District Judge sitting. This appointment was afterward set aside by Judge Baxter, the Circuit Judge, so far as that portion of the railroad situated in the State of Ohio was conderned—the Circuit Judges differing in their views—and Craig was appointed receiver thereof, leaving Dwight in charge of the remainder of the railroad. A few days thereafter Dwihgt resigned, Craig taking charge of and operating the entire system until a sale was made under the foreclosure proceedings referred to in the record.

These facts are not all disclosed by the record in this case, nor do we attempt to state them with entire accuracy, not having at hand the full record in the receivership. However, all debts proper, of both receivers, for supplies were ordered paid.

This Court is perhaps familiar with the proceedings from other phases of the litigation which have been before it.

Dwight was receiver of the *whole system* and operated the *entire property*, with the exception of the few days above named. Craig, his successor, with the like exception, held and operated the entire line from Toledo to St. Louis.

This being the case and under these circumstances, appellee sold and delivered these supplies to the receivers as officers of the Court having charge of the property, for use in the operation of which they were intended.

There is nothing in the record showing or tending to show that these supplies were not necessary to the continued operation of the railroad. We take it that the presumption is, that they were, since the receivers purchased and received the same and the Court having the property in charge ordered them paid upon the report of the Master that they had been furnished and received.

Appellee does not now know, never did know, nor never had the means nor opportunity of knowing upon what particular portion or division of the railroad these supplies were used. It knows that they were furnished to officers of the Court in charge of the entire property for use in the operation of the railroad, in full confidence that the Court would see to it that they were paid for. While it does not so affirmatively appear from the record, appellee has the best of reasons for believing that these supplies were all used upon the divisions of the road extending from Toledo, Ohio, to East St. Louis, Illinois—the divisions purchased by appellant at foreclosure sales. Among these reasons are the character of the supplies, the points to which shipped, and others not necessary to name here. Besides these supplies were sold to these receivers on board the cars at Fort Wayne, Indiana, appellee's place of business, and forwarded by direction of the purchasers to Delphos, Ohio, the nearest point on said main line of railroad. Neither does it appear from the record that these supplies were NOT *all* used, exclusively, upon that portion of the road purchased by appellant. Indeed, in view of the rule for distribu-